Supreme Court, U.S.
FILED
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(23)

No. 04-340

In the Supreme Court of the United States

SAN REMO HOTEL L.P., THOMAS FIELD, ROBERT FIELD, AND T&R INVESTMENT CORP.,
Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT OF CITY PLANNING, CITY PLANNING COMMISSION, BOARD OF PERMIT APPEALS, BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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Petition for Certiorari Filed September 7, 2004
Petition for Certiorari Granted December 10, 2004

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RELEVANT DOCKET ENTRIES

United States District Court for the Northern District of California (Oakland) **93-cv-1644**

5/4/93	1	COMPLAINT (Summons(es) issued) Fee status pd entered on 5/4/93 in the amount of $ 120.00 (Receipt No. 102052); jury demand (lrc) [Entry date 05/06/93]
5/4/93	2	CASE MANAGEMENT SCHEDULING ORDER by Senior Judge William H. Orrick: Proof of service to be filed by 6/18/93; counsels' case management statement to be filed by 8/23/93; initial case management conference will be held 2:00 9/2/93. (cc: all counsel) (lrc) [Entry date 05/06/93]
5/4/93	3	NOTICE by plaintiff of related case(s) C-91-4360 JPV (lrc) [Entry date 05/06/93]
5/11/93	4	ORDER by Judge John P. Vukasin Jr. granting related case notice [3-1] Case reassigned to Judge John P. Vukasin Jr., relating case with member cases C-91-3386 and C-91-4360 (Date Entered: 5/17/93) (cc: all counsel) (mcl) [Entry date 05/17/93] [Edit date 05/17/93]
7/1/93	5	MOTION before Judge John P. Vukasin Jr. by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor for preliminary injunction with Notice set for

		7/29/93 at 10:00 (jlw) [Entry date 07/02/93]
7/1/93	6	REQUEST for Preliminary Injunction by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor in support of motion for preliminary injunction (jlw) [Entry date 07/02/93]
7/1/93	7	MEMORANDUM by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor in support of motion for preliminary injunction [5-1] (jlw) [Entry date 07/02/93]
7/1/93	8	DECLARATION by Andrew M. Zacks on behalf of plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor re motion for preliminary injunction [5-1] (jlw) [Entry date 07/02/93]
7/1/93	--	RECEIVED Order (plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor) re: [5-1] (jlw) [Entry date 07/02/93]
7/1/93	9	RETURN OF SERVICE executed upon defendant San Francisco, City on 6/23/93 (mcl) [Entry date 07/02/93]

7/7/93	10	PROOF OF SERVICE by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff T & R Investment Cor of Notice & Motion, Declaration, Memorandum, Request for Judicial Notice, and Proposed Order (jlw) [Entry date 07/08/93]
7/8/93	11	MOTION before Judge John P. Vukasin Jr. by defendant San Francisco, City to continue hearing on motion for preliminary injunction (jlw) [Entry date 07/09/93]
7/8/93	12	EX-PARTE APPLICATION before Judge John P. Vukasin Jr. by defendant San Francisco, City to shorten time on motion for preliminary injunction [5-1] (jlw) [Entry date 07/09/93]
7/8/93	13	MEMORANDUM by defendant San Francisco, City in support of motion to continue hearing on motion for preliminary injunction [11-1] (jlw) [Entry date 07/09/93]
7/12/93	14	OPPOSITION by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor to motion to continue hearing on motion for preliminary injunction [11-1] (jlw) [Entry date 07/13/93]
7/12/93	15	DECLARATION by Andrew Zacks on behalf of plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor re

motion to continue hearing on motion for preliminary injunction [11-1] (jlw) [Entry date 07/13/93]

7/15/93 16 MEMORANDUM by defendant San Francisco, City in opposition to motion for preliminary injunction [5-1] (jlw) [Entry date 07/16/93]

7/15/93 17 DECLARATION by Bernard Tom on behalf of defendant San Francisco, City re motion for preliminary injunction [5-1] (jlw) [Entry date 07/16/93]

7/15/93 18 DECLARATION by Robert W. Passmore on behalf of defendant San Francisco, City re motion for preliminary injunction [5-1] (jlw) [Entry date 07/16/93]

7/19/93 19 NOTICE of Association of Counsel by plaintiffs The San Remo Hotel et al (jlw) [Entry date 07/20/93]

7/22/93 20 REPLY MEMORANDUM by plaintiffs The San Remo Hotel et al in support of motion for preliminary injunction [5-1] (jlw) [Entry date 07/27/93]

7/22/93 21 REPLY DECLARATION by Andrew M. Zacks on behalf of plaintiff The San Remo Hotel re motion for preliminary injunction [5-1] (jlw) [Entry date 07/27/93]

7/22/93 22 REPLY DECLARATION by Thomas Field on behalf of plaintiffs The San Remo

Hotel et al re motion for preliminary injunction [5-1] (jlw) [Entry date 07/27/93]

7/26/93 23 MOTION before Judge John P. Vukasin Jr. for leave to file amicus curiae brief with Notice set for 7/26/93 at 10:00 (jlw) [Entry date 07/28/93]

7/26/93 -- RECEIVED Amicus Curiae Brief re: [23-1] (jlw) [Entry date 07/28/93]

7/26/93 24 PROOF OF SERVICE of Motion for leave to file Brief and Brief (jlw) [Entry date 07/28/93]

7/26/93 -- RECEIVED Consent for Pacific Legal Foundation as amicus curiae re: [23-1] (jlw) [Entry date 07/28/93]

7/27/93 25 MOTION before Judge John P. Vukasin Jr. by defendant San Francisco, City to dismiss complaint or to stay with Notice set for 9/9/93 at 10:00 (jlw) [Entry date 07/29/93]

7/27/93 26 MEMORANDUM by defendant San Francisco, City in support of motion to dismiss complaint [25-1], of motion to stay [25-2] (jlw) [Entry date 07/29/93]

7/27/93 27 REQUEST by defendant San Francisco, City for Judicial Notice in support of motion to dismiss or for stay (jlw) [Entry date 07/29/93]

7/27/93	--	RECEIVED Order (defendant San Francisco, City) re: [25-1] (jlw) [Entry date 07/29/93]
7/28/93	28	MOTION before Judge John P. Vukasin Jr. by defendant San Francisco, City to continue motion for preliminary injunction and for leave to file additional brief with Notice set for 7/29/93 at 10:00 (jlw) [Entry date 07/29/93]
8/2/93	29	OPPOSITION by plaintiffs The San Remo Hotel et al to motion to continue motion for preliminary injunction [28-1], motion for leave to file additional brief [28-2] (jlw) [Entry date 08/06/93]
8/2/93	30	DECLARATION by Andrew Zacks on behalf of plaintiffs The San Remo Hotel et al re motion to continue motion for preliminary injunction [28-1], re motion for leave to file additional brief [28-2] (jlw) [Entry date 08/06/93]
8/4/93	31	REPLY by defendant SF City & County re opposition [29-1] (jlw) [Entry date 08/06/93]
8/26/93	32	MEMORANDUM by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor in opposition to motion to dismiss complaint [25-1] (jlw) [Entry date 08/27/93]

9/2/93	33	REPLY MEMORANDUM by defendant SF City & County re motion to dismiss complaint [25-1], re motion to stay [25-2] (jlw) [Entry date 09/03/93]
9/16/93	34	ORDER by Judge John P. Vukasin Jr. denying defendant's motion to dismiss complaint [25-1], granting plaintiff's motion for preliminary injunction [5-1] (Date Entered: 9/16/93) (cc: all counsel) (jlw) [Entry date 09/20/93]
9/21/93	35	NOTICE OF APPEAL by defendant SF City & County from Dist. Court decision order [34-1] paid, receipt #31092 (jlw)[Entry date 09/23/93]
9/21/93	36	APPLICATION for a Stay re: Order granting plaintiff' motion for preliminary injunction by defendant SF City & County (jlw) [Entry date 09/23/93]
9/23/93	--	Docket fee notification form and case information sheet to USCA [35-1] (jlw)
9/23/93	--	Copy of notice of appeal and docket sheet to all counsel (jlw)
9/28/93	37	ORDER Case reassigned to Judge D. L. Jensen All dates remain in effect unless otherwise ordered by Judge Jensen. (Date Entered: 9/29/93) (cc: all counsel) (fw) [Entry date 09/29/93]

9/28/93	38	NOTICE of USCA Orders denying stay by plaintiff The San Remo Hotel (jlw) [Entry date 10/01/93]
9/30/93	39	NOTICE by plaintiff The San Remo Hotel, plaintiff Thomas Field, plaintiff Robert Field, plaintiff T & R Investment Cor (jlw) [Entry date 10/01/93]
10/8/93	40	ANSWER by defendant SF City & County to complaint [1-1] (fw) [Entry date 10/12/93]
10/14/93	--	NOTIFICATION by Circuit Court of Appellate Docket Number 93-16733 (appeal filed 9/21/93) (fw) [Entry date 10/18/93]
10/19/93	41	CLERK'S NOTICE Status conference set for 10:00 11/10/93 ; counsel to file status statement by 11/3/93. (fw) [Entry date 10/21/93]
10/19/93	42	LETTER dated 10/8/93 from Paul Utrecht to Judge Jensen re request to hold status conference 12/8/93 at 3:30pm; request that matter be set for settlement conference. (fw) [Entry date 10/25/93]
10/26/93	43	CERTIFIED COPY of USCA Order: Case 93-16793 having been opened in error is hereby dismissed. Case number 93-16733 has been determined to be the only notice of appeal filed in this District Court case on 9/21/93 and shall proceed.

A certified copy of this order served on district court shall act as mandate of this court. (fw) [Entry date 10/29/93]

10/29/93	44	CLERK's letter spreading the mandate to counsel. re appeal [35-1] (fw)
11/8/93	45	CLERK'S NOTICE Status conference previously set for 11/10/93 rescheduled to 10:00 12/15/93 ; Status statements filed by 12/8/93. Briefing on plaintiff's motion for preliminary injunction in C-91-3386-DLJ in accordance with Court's Local rules. [3:93-cv-01644] (fw) [Entry date 11/09/93]
11/15/93	46	CERTIFIED COPY of USCA Order: dismissing the appeal [35-1] re appeal 93-16733 [3:93-cv-01644] (fw)[Entry date 12/06/93]
12/6/93	47	CLERK's letter spreading the mandate to counsel. re appeal [35-1] [3:93-cv-01644] (fw)
12/7/93	--	RECEIVED Substitution Attorneys submitted by defendant SF City & County in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 12/09/93]
12/8/93	48	STATUS CONFERENCE STATEMENT by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment

		Cor in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 12/09/93]
12/8/93	49	STATUS CONFERENCE STATEMENT by defendant SF City & County in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 12/09/93]
12/15/93	50	MINUTES: (C/R Rosita Flores) Status conference held; Status conference set for 10:00 1/19/94 ; [3:93-cv-01644] (fw) [Entry date 12/17/93]
12/16/93	51	ORDER by Judge D. L. Jensen withdrawing and substituting attorney Andrew W. Schwartz (Date Entered: 12/17/93) (cc: all counsel) [3:93-cv-01644] (fw) [Entry date 12/17/93]
12/22/93	52	NOTICE AND MOTION before Judge D. L. Jensen by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 for leave to file amended and supplemental complaint with Notice set for 1/19/94 at 10:00am [3:93-cv-01644] (fw) [Entry date 12/23/93]
12/22/93	53	MEMORANDUM by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 in

		support of motion for leave to file amended and supplemental complaint [52-1] [3:93-cv-01644] (fw) [Entry date 12/23/93]
12/22/93	54	DECLARATION by Andrew M. Zacks on behalf of plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 re motion for leave to file amended and supplemental complaint [52-1] [3:93-cv-01644] (fw) [Entry date 12/23/93]
12/22/93	--	RECEIVED Order (plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T Investment Cor in 3:93-cv-01644) re: [52-1] [3:93-cv-01644] (fw) [Entry date 12/23/93]
1/5/94	55	RESPONSE - non-opposition by defendant SF City & County in 3:93-cv-01644 re motion for leave to file amended and supplemental complaint [52-1] [3:93-cv-01644] (fw) [Entry date 01/06/94]
1/19/94	56	MINUTES: (C/R Angie Roberts) Status conference held; that the motion for leave to file amended and supplemental complaint [52-1] is submitted Status conference set for 8:30 3/23/94 ; [3:93-cv-01644] (fw) [Entry date 01/21/94]

1/19/94	57	ORDER by Judge D. L. Jensen granting motion for leave to file amended and supplemental complaint [52-1] (Date Entered: 1/21/94) (cc: all counsel) [3:93-cv-01644] (fw) [Entry date 01/21/94]
1/24/94	58	FIRST AMENDED AND SUPPLEMENTAL COMPLAINT [1-1] by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 01/25/94]
1/28/94	59	ANSWER by defendant SF City & County in 3:93-cv-01644 to First Amended and Supplemental complaint [58-1] [3:93-cv-01644] (fw) [Entry date 01/31/94]
2/2/94	60	NOTICE OF MOTION AND MOTION before Judge D. L. Jensen by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 for partial summary judgment as to 6th Count with Notice set for 3/2/94 at 10:00am [3:93-cv-01644] (fw)
2/2/94	61	MEMORANDUM by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T

		& R Investment Cor in 3:93-cv-01644 in support of motion for partial summary judgment as to 6th Count [60-1] [3:93-cv-01644] (fw)
2/2/94	62	REQUEST FOR JUDICIAL NOTICE by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 [3:93-cv-01644] (fw)
2/2/94	63	DECLARATION by Andrew M. Zacks on behalf of plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 re motion for partial summary judgment as to 6th Count [60-1] [3:93-cv-01644] (fw)
2/2/94	--	RECEIVED Order (plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644) re: [60-1] [3:93-cv-01644] (fw)
2/11/94	64	PROOF OF SERVICE by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 of Papers in support of motion for partial summary judgment at to 6th cause of

action. [3:93-cv-01644] (fw) [Entry date 02/14/94]

2/16/94 65 MEMORANDUM by defendant SF City & County in 3:93-cv-01644 in opposition to motion for partial summary judgment as to 6th Count [60-1] [3:93-cv-01644] (fw) [Entry date 02/17/94]

2/16/94 66 DECLARATION by Andrew W. Schwartz on behalf of defendant SF City & County in 3:93-cv-01644 re opposition memorandum [65-1] [3:93-cv-01644] (fw) [Entry date 02/17/94]

2/16/94 -- RECEIVED Order denying plaintiffs' motion for partial summary judgment (defendant SF City & County in 3:93-cv-01644) re: [65-1] [3:93-cv-01644] (fw) [Entry date 02/17/94]

2/18/94 67 AMENDED MEMORANDUM by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 in support of motion for partial summary judgment as to 6th Count [60-1] [3:93-cv-01644] (fw) [Entry date 02/22/94]

2/24/94 68 STIPULATION and ORDER by Judge D. L. Jensen : setting hearing on motion for partial summary judgment as to 6th Count

[60-1] 10:00 3/9/94 (cc: all counsel) [3:93-cv-01644] (fw) [Entry date 02/25/94]

3/2/94 69 REPLY declaration of Andrew M. Zacks by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 re motion for partial summary judgment as to 6th Count [60-1] [3:93-cv-01644] (fw) [Entry date 03/03/94]

3/2/94 70 REPLY by plaintiff The San Remo Hotel plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R Investment Cor in 3:93-cv-01644 re motion for partial 6th Count [60-1] [3:93-cv-01644] (fw) [Entry date 03/03/94]

3/8/94 71 ORDER by Judge D. L. Jensen Cases C-94-0435-WHO and C-93-1644-DLJ are NOT related. (Date Entered: 3/8/94) (cc: all counsel) [3:93-cv-01644] (fw)

3/8/94 72 ORDER by Judge D. L. Jensen relating cases C-94-0629-SBA; C-93-1644-DLJ; C-91-4360-DLJ and C-91-3386-DLJ (Date Entered: 3/9/94) (cc:all counsel) [3:93-cv-01644] (fw) [Entry date 03/09/94]

3/17/94 73 STATUS CONFERENCE STATEMENT by defendant SF City & County in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 03/18/94]

3/22/94	74	STATUS CONFERENCE STATEMENT by plaintiff The San Remo Hotel in 3:93-cv-01644, plaintiff Thomas Field in 3:93-cv-01644, plaintiff Robert Field in 3:93-cv-01644, plaintiff T & R !nvestment Cor in 3:93-cv-01644 [3:93-cv-01644] (fw) [Entry date 03/23/94]
3/30/94	76	MINUTES: (C/R Candace Yount) Status conference held; that the motion for partial summary judgment as to 6th Count [60-1] is submitted Status conference set for 10:00 4/20/94 ; [3:93-cv-01644] (fw) [Entry date 04/01/94]
3/31/94	75	ORDER by Judge D. L. Jensen denying motion for partial summary judgment as to 6th Count [60-1] (Date Entered: 4/1/94) (cc: all counsel) [3:93-cv-01644] (fw) [Entry date 04/01/94]
4/20/94	77	MINUTES: (C/R Rosita Flores) Status conference set for 3:30 5/25/94 ; [3:93-cv-01644] (mcl) [Entry date 04/22/94]
5/13/94	78	CLERK'S NOTICE Status conference set for 5/25/94 is rescheduled to 4:00 5/26/94; [3:93-cv-01644] (fw) [Entry date 05/17/94]
6/2/94	79	MINUTES: of 5/31/94 (C/R Carl Pline) Status conference held; Status conference set for 3:00 7/20/94 ; [3:93-cv-01644] (fw) [Entry date 06/03/94]

6/2/94	80	CLERK'S NOTICE Further Status conference set for 3:00 7/20/94; [3:93-cv-01644] (fw) [Entry date 06/07/94]
7/20/94	81	MINUTES: (C/R Carol Karen) Status conference held; Order to be prepared by Court. [3:93-cv-01644] (fw) [Entry date 07/21/94]
10/26/94	82	NOTICE by Plas in 3:93-cv-01644 of change of attys' address to: Andrew M. Zacks; Law Offices of Andrew M. Zacks; Paul F. Utrecht; Law Offices of Paul F. Utrecht; 235 Montgomery Street; Suite 1159; San Francisco, CA 94104 [3:93-cv-01644] (mh) [Entry date 11/02/94]
10/31/94	83	ORDER by Judge D. L. Jensen relating case C91-2001DLJ, C91-3386DLJ (see order for other member cases) (Date Entered: 11/7/94) (cc: all counsel) [3:93-cv-01644] (cg) [Entry date 11/07/94]
12/30/94	84	NOTICE by Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor of change of address [4:93-cv-01644] (kk) [Entry date 01/10/95]
12/30/94	85	NOTICE by Plaintiff of change of address [4:93-cv-01644] (kk) [Entry date 01/10/95]

5/8/95	86	NOTICE by Plas of change of atty's address [4:93-cv-01644] (mh) [Entry date 05/11/95]
11/8/95	87	MOTION before Judge D. L. Jensen by defendant SF City and County for summary judgment with Notice set for 12/13/95 at 10am [4:93-cv-01644] (mh) [Entry date 11/13/95]
11/8/95	88	MEMORANDUM by defendant SF City and County in support of motion for summary judgment [87-1] [4:93-cv-01644] (mh) [Entry date 11/13/95]
11/8/95	89	DECLARATION by Rosemary Bosque on behalf of defendant SF City and County re motion for summary judgment [87-1] [4:93-cv-01644] (mh) [Entry date 11/13/95]
11/8/95	90	DECLARATION by Lawrence B. Badiner on behalf of defendant SF City and County re motion for summary judgment [87-1] [4:93-cv-01644] (mh) [Entry date 11/13/95]
11/8/95	91	REQUEST FOR JUDICIAL NOTICE by defendant SF City and County [4:93-cv-01644] (mh) [Entry date 11/13/95]
11/14/95	92	ORDER by Judge D. L. Jensen referring this case to the Chief Mag Judge for the purposes of discovery (Date Entered:

		11/16/95) (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 11/16/95]
11/16/95	--	REFERRAL: referring case for discovery to Mag. Judge F. S. Langford [4:93-cv-01644] (wh)
11/21/95	93	STIPULATION and ORDER by Judge D. L. Jensen : Defendant City & County of SF's motion for summary judgment will be heard by 10:00 1/3/96 ; (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 11/24/95]
11/30/95	94	MEMORANDUM by Plaintiff in support of motion to compel answers to deposition questions [4:93-cv-01644] (mh) [Entry date 12/06/95]
11/30/95	95	PROOF OF SERVICE by Plaintiff of Motion to compel answers & documents thereof [4:93-cv-01644] (mh) [Entry date 12/06/95]
12/5/95	96	MOTION before Judge D. L. Jensen by Plaintiff to continue hearing on the motion for summary judgment with Notice set for 12/8/95 [4:93-cv-01644] (mh) [Entry date 12/06/95]
12/5/95	97	DECLARATION by Paul F. Utrecht on behalf of Plaintiff re motion to continue hearing on the motion for summary

judgment [96-1] [4:93-cv-01644] (mh) [Entry date 12/06/95]

12/5/95 98 PROOF OF SERVICE by Plaintiff of #96 & #97 [4:93-cv-01644] (mh) [Entry date 12/06/95]

12/7/95 99 ORDER by Judge D. L. Jensen granting Plaintiff's motion to continue hearing on the motion for summary judgment [96-1] Plaintiff San Remo Hotel's Motion for summary judgment will be heard by 10am 2/7/96 (Date Entered: 12/8/95) (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 12/08/95]

12/8/95 100 OPPOSITION by defendant SF City and County to the motion to continue the hearing on City's motion for summary judgment [4:93-cv-01644] (mh)

1/3/96 101 STIPULATION and ORDER by Judge D. L. Jensen : City's Motion for summary judgment will be heard by 10am 3/27/96 ; (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 01/04/96]

1/18/96 102 MEMORANDUM by defendant SF City and County in opposition to the motion to compel answer to deposition questions [4:93-cv-01644] (mh) [Entry date 01/23/96]

1/18/96 103 DECLARATION by Ted Dienstfrey on behalf of defendant SF City and County in

opposition to motion to compel answers to deposition question [4:93-cv-01644] (mh) [Entry date 01/23/96]

1/25/96 104 REPLY MEMORANDUM by Plaintiff in support of motion to compel answers to deposition questions [4:93-cv-01644] (mh) [Entry date 01/29/96]

1/25/96 105 PROOF OF SERVICE by Plaintiff of of the reply memorandum in support of motion to compel & the Reply declaration of Andrew M. Zacks [4:93-cv-01644] (mh) [Entry date 01/29/96]

1/25/96 106 REPLY DECLARATION by Andrew M. Zacks on behalf of Plaintiff [4:93-cv-01644] (mh) [Entry date 01/29/96]

2/8/96 107 MINUTES: before Mag Judge Langford (C/R Tape 96-2) Plaintiff's motion to compel deposition answers is submitted [4:93-cv-01644] (mh) [Entry date 02/13/96]

2/14/96 108 MEMORANDUM by defendant SF City and County in support of motion for summary judgment [87-1] [4:93-cv-01644] (mh) [Entry date 02/22/96]

2/28/96 109 ORDER by Chief Mag. Judge F. S. Langford GRANTING plaintiffs' motion to compel answers to deposition questions (Date Entered: 3/1/96) (cc: all counsel)

[4:93-cv-01644] (mh) [Entry date 03/01/96]

3/11/96 110 STIPULATION and ORDER by Judge D. L. Jensen : The City's motion for summary judgment will be heard by 10:00 4/17/96 ; (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 03/12/96]

3/11/96 111 OBJECTIONS by defendant SF City and County to Magistrate's order granting plaintiff's motion to compel answers to deposition questions & motion to receive further evidence [4:93-cv-01644] (mh) [Entry date 03/14/96]

3/11/96 112 DECLARATION by James Lazarus on behalf of defendant in support of the objection [111-1] [4:93-cv-01644] (mh) [Entry date 03/14/96]

3/11/96 113 SUPPLEMENTAL DECLARATION by Ted Dienstfrey on behalf of defendant in opposition to motion to compel answers to deposition questions [4:93-cv-01644] (mh) [Entry date 03/14/96]

3/27/96 114 STIPULATION and ORDER by Judge D. L. Jensen : The City's motion for summary judgment will be heard by 10am 5/15/96 (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 04/01/96]

4/25/96 115 STIPULATION and ORDER by Judge D. L. Jensen : The City's motion for

summary judgment will be heard by 10am 7/3/96 (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 04/29/96]

6/7/96 116 MEMORANDUM by Plaintiffs in opposition to the motion for summary judgment [4:93-cv-01644] (mh)

6/7/96 117 DECLARATION by Paul F. Utrecht on behalf of Plaintiff in opposition to the motion for summary judgment [4:93-cv-01644] (mh)

6/7/96 118 DECLARATION by Robert Field on behalf of Plaintiffs in opposition to motion for summary judgment [4:93-cv-01644] (mh)

6/7/96 119 DECLARATION by James Whelan on behalf of Plaintiffs [4:93-cv-01644] (mh)

6/7/96 120 DECLARATION by Andrew M. Zacks on behalf of Plaintiffs in opposition to the motion for summary judgment [4:93-cv-01644] (mh)

6/7/96 121 REQUEST FOR JUDICIAL NOTICE by Plaintiffs in opposition to the motion for summary judgment [4:93-cv-01644] (mh)

6/7/96 122 PROOF OF SERVICE by Plaintiffs of #116 - #121 [4:93-cv-01644] (mh)

6/19/96 123 REPLY by defendant SF City and County to opposition to motion for summary

judgment [87-1] [4:93-cv-01644] (kk) [Entry date 06/24/96]

7/1/96 124 SUPPLEMENT by Plaintiff re declaration of Andrew M. Zacks [120-1] [4:93-cv-01644] (mh) [Entry date 07/02/96]

7/3/96 125 MINUTES: (C/R Carol Karen) that the motion for summary judgment [87-1] is submitted Hearing held [4:93-cv-01644] (mh) [Entry date 07/09/96]

8/26/96 126 ORDER by Judge D. L. Jensen granting defendant's motion for summary judgment [87-1] as to the facial takings claim; as to the pendant state law claims and counts 5 & 6 of the Complaint; The preliminary injunction issued in this action is VACATED; Plaintiffs' state law action for mandamus review is still pending, plaintiffs' request for leave to amend to add an equal protection claim is DENIED as futile at this time; The Court expresses no opinion on the merits of this claim dismissing case; appeal filing ddl 9/26/96 (Date Entered: 8/27/96) (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 08/27/96]

8/26/96 127 JUDGMENT: by Judge D. L. Jensen Judgment is hereby entered in favor of defendant City & County of San Francisco & against plaintiffs The San Remo Hotel, L.P., Thomas Field, Robert Field, &

T&R Investment Corp. (Date Entered: 8/27/96) (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 08/27/96]

9/12/96 128 BILL OF COSTS submitted by defendant SF City and County re judgment [127-2] [4:93-cv-01644] (mh)

9/20/96 129 NOTICE OF APPEAL by Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor from Dist. Court decision judgment [127-2], order [126-2]; Appeal Fee status PAID [4:93-cv-01644] (mh) [Entry date 09/24/96]

9/20/96 130 TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiff for dates 3/30/94, & 7/3/96 ; C/R: Not Given; appeal [129-1] [4:93-cv-01644] (mh) [Entry date 09/24/96]

9/24/96 -- Docket fee notification form and case information sheet to USCA [129-1] [4:93-cv-01644] (mh)

9/24/96 -- Copy of notice of appeal and docket sheet to all counsel [4:93-cv-01644] (mh)

10/9/96 -- COSTS taxed for defendant SF City and County in the amount of $ 738.00 against Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor (cc: all counsel) [4:93-cv-01644] (mh)

10/9/96	--	NOTIFICATION by Circuit Court of Appellate Docket Number 96-16843 of the Appeal file 9/20/96 [4:93-cv-01644] (mh)
10/21/96	131	REPORTER'S TRANSCRIPT; Date of proceedings: 3/30/94 (C/R: Candace L. Yount) [4:93-cv-01644] (mh)
10/21/96	132	REPORTER'S TRANSCRIPT; Date of proceedings: 7/3/96 (C/R: Carol Al Karen) [4:93-cv-01644] (mh)
10/25/96	--	CERTIFICATE of Record mailed to USCA, counsel notified. [4:93-cv-01644] (mh)
10/16/97	--	RECORD on Appeal to USCA, cnsl notified. re appeal [129-1] [4:93-cv-01644] (scu)
10/21/97	133	RECEIPT from USCA of clerk's record on appeal [4:93-cv-01644] (mh) [Entry date 10/22/97]
6/25/98	134	RECEIPT from USCA of clerk's record on appeal [4:93-cv-01644] (mh)
8/14/98	135	CERTIFIED COPY of USCA Mandate Order: affirming in part, reversing in part, remanding in part the decision of the District Court [Appeal [129-1] [4:93-cv-01644] (mh) [Entry date 08/17/98]

8/17/98	136	CLERK's letter spreading the mandate to counsel. re appeal [129-1] [4:93-cv-01644] (mh)
8/24/98	137	CLERK'S NOTICE Status conference set for 8:30am on 9/30/98; Status Conference Statement is due 9/21/98 [4:93-cv-01644] (mh) [Entry date 08/25/98]
9/22/98	138	JOINT STATUS CONFERENCE STATEMENT by Plaintiffs [4:93-cv-01644] (mh) [Edit date 09/22/98]
9/30/98	139	MINUTES: (C/R Not Reported) Status conference held & continued for 9:30am on 10/13/99 [4:93-cv-01644] (mh) [Entry date 10/02/98]
10/8/98	140	ORDER by Judge D. L. Jensen Pursuant to the Ninth Circuit's mandate, the Court hereby VACATES the judgment issued pursuant to this Court's 8/26/96 Order & ORDERS the dismissal of Plaintiffs' as-applied takings claim as unripe; Denying Plaintiffs' leave to amend to state an equal protection claim [SEE DOCUMENT FOR DETAILS] (Date Entered:1009/98) (cc: all counsel) [4:93-cv-01644] (mh) [Entry date 10/09/98]
2/10/99	141	NOTICE by defendant SF City and County of change of address of attorney [4:93-cv-01644] (rl) [Entry date 02/11/99]

10/13/99	142	MINUTES: (C/R Not Reported) (Hearing Date: October 13, 1999) Status conference, via telephone, held. Case in state Court of Appeals with briefing schedule set. Hearing in summer at Court of Appeals (estimated date). Further status conference, via telephone, is set for 1:30 p.m. on 5/26/00. [4:93-cv-01644] (rl) [Entry date 10/14/99]
10/13/99	143	CLERK'S NOTICE Status conference, via telephone, is set for 1:30 p.m. on 5/26/00. [4:93-cv-01644] (rl) [Entry date 10/14/99]
2/4/00	144	NOTICE by Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor of change of suite number [4:93-cv-01644] (rl)
5/26/00	145	MINUTES: (C/R Not Reported) (Hearing Date: 5/26/00) Further Status conference set for 1:30pm on 10/27/00; [4:93-cv-01644] (oh) [Entry date 05/30/00]
10/27/00	146	MINUTES: (C/R not reported) (Hearing Date: 10/27/00) Further Status conference telephone [4:93-cv-01644] (kk) [Entry date 10/30/00]
2/9/01	147	MINUTES: (C/R Not Reported) (Hearing Date: 2/9/01) Telephonic status conference not held. Telephonic Status conference continued to 2/16/01 . [4:93-cv-01644] (rl) [Entry date 02/13/01]

2/16/01	148	MINUTES: (C/R not reported) (Hearing Date: 2/16/01) Hearing not held, defense attorney unavailable [4:93-cv-01644] (kk) [Entry date 02/20/01]
2/20/01	149	CLERK'S NOTICE Telephonic status conference is set for 1:30 p.m. on 4/13/01. [4:93-cv-01644] (rl) [Entry date 02/22/01]
4/9/01	150	JOINT STATUS CONFERENCE STATEMENT by Plaintiffs [4:93-cv-01644] (rl) [Entry date 04/10/01]
4/10/01	151	CLERK'S NOTICE Telephonic status conference is continued from 4/13/01 to 1:30 p.m. on 1/11/02. [4:93-cv-01644] (rl)
1/7/02	152	STATUS CONFERENCE STATEMENT by Plaintiffs [4:93-cv-01644] (kc) [Entry date 01/08/02]
1/8/02	153	STATUS CONFERENCE STATEMENT by defendant SF City and County [4:93-cv-01644] (kc) [Entry date 01/10/02]
1/9/02	154	CLERK'S NOTICE Status conference 1:30 by telephone [4:93-cv-01644] (kc) [Entry date 01/10/02]
1/11/02	155	MINUTES: (C/R not reported) Status conference reschedule to 1:30 on 3/29/02 [4:93-cv-01644] (kc)

3/22/02	156	STATUS CONFERENCE STATEMENT by defendant SF City and County [4:93-cv-01644] (kc)
3/29/02	157	MINUTES: (C/R not reported) (Hearing Date: 3/29/02) status hearing not held [4:93-cv-01644] (kc) [Entry date 04/03/02]
4/3/02	158	CLERK'S NOTICE Status conference by telephone set for 1:30 on 5/10/02 [4:93-cv-01644] (kc) [Entry date 04/04/02]
5/8/02	159	STATUS REPORT by Plaintiffs [4:93-cv-01644] (kk) [Entry date 05/09/02]
5/10/02	160	MINUTES: (C/R not reported) (Hearing Date re: status held on May 10, 2002) Plaintiff to file amended complaint by June 4, 2002 [4:93-cv-01644] (kk) [Entry date 05/13/02]
6/13/02	161	AMENDED COMPLAINT [58-1] by Plaintiff [4:93-cv-01644] (kk) [Entry date 06/14/02]
6/27/02	162	NOTICE OF MOTION AND MOTION before Judge D. L. Jensen by defendant SF City and County to dismiss amended complaint with Notice set for 8/2/02 at 2:00 [4:93-cv-01644] (kc)
6/27/02	163	MEMORANDUM by defendant SF City motion to dismiss amended complaint (kc)

6/27/02	164	REQUEST FOR JUDICIAL NOTICE by defendant SF City and County motion to dismiss amended complaint [162-1] [4:93-cv-01644] (kc)
6/27/02	--	RECEIVED Proposed Order (defendant SF City and County) re: motion to dismiss amended complaint [162-1] [4:93-cv-01644] (kc)
7/3/02	165	PROOF OF SERVICE by defendant of order received [0-0], request [164-1], memorandum [163-1], motion to dismiss amended complaint [162-1] [4:93-cv-01644] (oh) [Entry date 07/05/02]
7/15/02	166	STIPULATION and ORDER by Judge D. L. Jensen: continuing hearing on motion to dismiss amended complaint [162-1] to 2:00 on 9/6/02; opposition to be filed by 7/26/02; reply due 8/9/02; (cc: all counsel) [4:93-cv-01644] (kc) [Entry date 07/16/02]
7/29/02	167	MEMORANDUM by Plaintiff in opposition to motion to dismiss amended complaint [162-1] [4:93-cv-01644] (kk)
7/29/02	168	EXHIBIT A re opposition memorandum [167-1] [4:93-cv-01644] (kk)
7/31/02	--	RECEIVED stipulation and proposed order extending filing deadline for opposition to dismiss submitted by Plaintiffs [4:93-cv-01644] (kc)

7/31/02	169	STIPULATION and ORDER by Judge D. L. Jensen : extending filing deadline for opposition to motion to dismiss to 7/29/02 (cc: all counsel) [4:93-cv-01644] (kk) [Entry date 08/01/02]
8/9/02	170	REPLY memorandum by defendant SF City and County in support of motion to [4:93-cv-01644] (pta) [Entry date 08/12/02]
8/19/02	171	APPLICATION before Judge D. L. Jensen by Pacific Legal Foundation for leave to appear as amicus curiae [4:93-cv-01644] (kc)
8/19/02	--	RECEIVED brief in opposition to motion to dismiss amended complaint by Pacific Legal Foundation [4:93-cv-01644] (kc)
8/19/02	172	PROOF OF SERVICE by Pacific Legal leave to appear as amicus curiae [171-1]; brief in opposition [4:93-cv-01644] (kc)
8/22/02	173	LETTER to Judge Jensen, dated 8/19/02, from Andrew W. Schwartz regarding copy of recent opinion of the Ca. Court of Appeal [4:93-cv-01644] (kc) [Entry date 08/26/02]
9/3/02	174	ORDER by Judge D. L. Jensen Legal Foundation for leave to appear as amicus curiae [171-1] (Date Entered: 9/3/02) (cc: all counsel) [4:93-cv-01644] (kc)

9/3/02	175	Brief in OPPOSITION by Amicus Curiae Pacific Legal Found to motion to dismiss amended complaint [162-1] [4:93-cv-01644] (kc)
9/5/02	176	REPLY by defendant SF City and County re opposition [175-1] [4:93-cv-01644] (oh) [Entry date 09/09/02]
9/6/02	177	MINUTES: (C/R Raynee Mercado) (Hearing Date: 9/6/02) motion to dismiss amended complaint [162-1] held and under submission; Court to prepare order [4:93-cv-01644] (kc) [Entry date 09/10/02]
10/15/02	178	ORDER by Judge D. L. Jensen granting motion to dismiss amended complaint [162-1] Plaintiff granted leave to amend within 30 days of the date of this order (Date Entered: 10/16/02) (cc: all counsel) [4:93-cv-01644] (kk) [Entry date 10/16/02]
11/14/02	179	THIRD AMENDED COMPLAINT by Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor [4:93-cv-01644] (kk) [Entry date 11/15/02]
12/9/02	180	SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE by defendant SF

		City and County in support of motion to dismiss amended complaint [181] [4:93-cv-01644] (oh) [Entry date 12/10/02] [Edit date 01/15/03]
12/9/02	181	NOTICE OF MOTION AND MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES before Judge D. L. Jensen by defendant SF City and County to dismiss third amended complaint with Notice set for 1/24/03 at 2:00pm [4:93-cv-01644] (kk) [Entry date 01/15/03]
12/30/02	182	NOTICE by Plaintiff of attorney's change of address [4:93-cv-01644] (kc)
12/31/02	--	RECEIVED stipulation & order continuing motion to dismiss hearing date submitted by Plaintiff [4:93-cv-01644] (kk) [Entry date 01/02/03]
1/15/03	183	STIPULATION and ORDER by Judge D. L. Jensen : setting hearing on motion to dismiss third amended complaint [181-1] at 2:00pm on 3/7/03; opposition due 1/17/03; reply due 2/7/03(cc: all counsel) [4:93-cv-01644] (kk)
1/17/03	184	MEMORANDUM by Plaintiff in opposition to motion to dismiss third amended complaint [181-1]

		[4:93-cv-01644] (kk) [Entry date 01/21/03]
1/17/03	185	REQUEST FOR JUDICIAL NOTICE by Plaintiff opposition memorandum [184-1] [4:93-cv-01644] (kk) [Entry date 01/21/03]
2/7/03	186	REPLY by defendant SF City and County re motion to dismiss third amended complaint [181-1] [4:93-cv-01644] (oh) [Entry date 02/10/03]
2/24/03	187	STIPULATION and ORDER by Judge D. L. Jensen : setting hearing on motion to dismiss third amended complaint [181-1] 2:00 3/21/03 (cc: all counsel) [4:93-cv-01644] (kk) [Entry date 02/25/03]
3/21/03	188	MINUTES: (C/R Raynee Mercado) (Hearing Date: 3/21/03) that the motion to dismiss third amended complaint [181-1] is submitted [4:93-cv-01644] (kk) [Entry date 03/24/03]
3/25/03	189	LETTER dated 3/24/03 from Paul F. Utrecht re: response to question posed at 3/21/03 hearing [4:93-cv-01644] (kk) [Entry date 03/26/03]

3/31/03	190	LETTER dated 3/27/03 from Andrew W. Schwartz re: San Remo claim [4:93-cv-01644] (kk) [Entry date 04/02/03]
4/16/03	191	ORDER by Judge D. L. Jensen granting motion to dismiss third amended complaint [181-1] dismissing case; appeal filing ddl 5/17/03 (Date Entered: 4/17/03) (cc: all counsel) [4:93-cv-01644] (kk) [Entry date 04/17/03]
4/28/03	192	JUDGMENT entered in favor of defendants City & County of San Francisco and against plaintiffs San Remo Hotel, Thomas Field, Robert Field and T&R Investment Corp. pursuant to court order 4/16/03 by Judge D. L. Jensen (Date Entered: 4/30/03) (cc: all counsel) [4:93-cv-01644] (kk) [Entry date 04/30/03]
5/1/03	193	NOTICE by defendant SF City and County [192-1] judgment [4:93-cv-01644] (kk) [Entry date 05/02/03]
5/6/03	194	NOTICE OF APPEAL by Plaintiff The San Remo Hotel, Plaintiff Thomas Field, Plaintiff Robert Field, Plaintiff T & R Investment Cor from Dist. Court decision judgment [192-1] Fee status paid [4:93-cv-01644] (oh)

5/6/03	--	Docket fee notification form and case information sheet to USCA [194-1] [4:93-cv-01644] (oh)
5/6/03	--	Copy of notice of appeal and docket sheet to all counsel [4:93-cv-01644] (oh)
6/2/03	195	TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiffs for dates 9/6/02, 3/21/03; C/R: Raynee Mercado; appeal [194-1] [4:93-cv-01644] (kc)
7/7/03	196	REPORTER'S TRANSCRIPT; Date of proceedings: 9/6/02 (C/R: Raynee Mercado) minutes [177-1] [4:93-cv-01644] (kc) [Entry date 07/08/03]
7/7/03	197	REPORTER'S TRANSCRIPT; Date of proceedings: 3/21/03 (C/R: Raynee Mercado) minutes [188-1] [4:93-cv-01644] (kc) [Entry date 07/08/03]
7/8/03	--	CERTIFICATE of Record mailed to USCA, counsel notified. [4:93-cv-01644] (kc)
6/21/04	198	COPY of judgment from USCA affirming the decision of the District Court [194-1] [4:93-cv-01644] (fw) [Entry date 06/22/04]

6/22/04	199	CLERK's letter spreading the mandate to counsel. re appeal [194-1] [4:93-cv-01644] (fw)

United States Court of Appeals
for the Ninth Circuit
96-16843

10/3/96	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting schedule as follows: CADS is past due; CADS must be filed no later than 10/10/96; appellant's designation of RT is due 9/30/96; appellee's designation of RT is due 10/10/96; appellant shall order transcript by 10/21/96; court reporter shall file transcript in DC by 11/20/96; certificate of record shall be filed by 11/27/96; appellant's opening brief is due 1/6/97; appellees' brief is due 2/5/97; appellants' reply brief is due 2/19/97. [96-16843] (tm)
10/3/96	Filed notice of representation of Paul F. Utrecht, Esq. for aplts. [96-16843] (dg)
10/3/96	Filed attorney for Appellant Civil Appeals Docketing Statement served on 10/2/96 (to CONFATT) [96-16843] [96-16843] (dg)
10/16/96	Filed Candace Yount's notice of order of transcript. RT ordered 10/4/96; Expected payment date: 10/7/96; Number of pages:; Expected completion: [96-16843] (dg)
10/28/96	Filed certificate of record on appeal RT filed in DC 10/21/96 [96-16843] (dg)
11/18/96	Case released from Pre-Briefing Conference program. (ah)

12/30/96	7 day oral extension by phone of time to file The San Remo Hotel brief. [96-16843] appellants' brief due 1/13/97; appellees' brief due 2/12/97,, ; optional reply brief due 14 days from service of answering brief (cb)
1/13/97	Filed original and 15 copies Aplts' opening brief (Informal: n) 43 pages & 5 Exc. Rec.; served on 1/13/97 [96-16843] (gva)
2/12/97	Filed original and 15 copies appellee S.F. City and County, Dept. City Planning, City Planning Comm., Board of Permit, Board of Supervisors's 35 pages brief, ; served on 2/12/97 [96-16843] (ajk)
2/24/97	14 day oral extension by phone of time to file 's reply brief. [96-16843] appellants' reply brief due 3/12/97; (king)
3/12/97	Filed original and 15 copies The San Remo Hotel, Thomas Field, Robert Field, T&R Investment Corp. reply brief, (Informal: no) 23 pages; served on 3/12/97 [96-16843] (ajk)
3/14/97	Copy of letter received from Paul Utrecht dated 2/25/97 re: ex..tm.f aplt's rpy br. Brief due 3/12/97 (Casefiles) [96-16843] (gva)
6/24/97	Calendar check performed [96-16843] (aw)
8/25/97	Calendar materials being prepared. [96-16843] [96-16843] (mw)

8/28/97	CALENDARED: SAN FRAN Nov 4 1997 9:00 am Courtroom 1[96-16843] (aw)
10/27/97	Received Aples' additional citations, served on 10/27/97 (fed.ex to Panel) [96-16843] (gva)
11/4/97	ARGUED AND SUBMITTED TO Harlington Wood, Pamela A. RYMER, A. W. TASHIMA [96-16843] (ah)
6/3/98	FILED OPINION: We affirm the d.c's dismissal of Field's as applied takings claim, the denial of leave to amend the complaint to state an equal protection claim, and the dismissal of the Permit Streamlining Act claim. We reverse the d.c's dismissal of Field's facial takings claim and remand with instructions to abstain under Pullman. Each side shall bear its own costs on appeal. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. Harlington Wood; A. RYMER; A. W. TASHIMA, author) FILED AND ENTERED JUDGMENT.[96-16843] (gva)
6/17/98	[3473288] Filed original and 3 copies Aple S.F. City and County of San Franciso; 10 pages; served on 6/17/98 (Panel) [96-16843] (gva)

8/3/98	Filed order (Harlington Wood, Pamela A. RYMER, A. W. TASHIMA): Defendants-appellees' petition for rehearing is denied. [3473288-1] [96-16843] (gva)
8/11/98	MANDATE ISSUED [96-16843] (sm)
6/22/00	RECORD RETURNED. (See control card for details.) (jk)

The United States Court of Appeals
for the Ninth Circuit
03-15853

5/9/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): YES. setting schedule as follows: CADS is past due; CADS must be filed no later than 5/16/03; appellant's designation of RT is due 5/16/03,, ; appellee's designation of RT is due 5/27/03; appellant shall order transcript by 6/5/03; court reporter shall file transcript in DC by 7/7/03; certificate of record shall be filed by 7/14/03 ; appellant's opening brief is due 8/22/03; appellees' brief is due 9/22/03; appellants' reply brief is due 10/6/03. [03-15853] (mhf)
5/9/03	Receive notice of representation of Paul Utrecht as csl for aplts; served on 5/7/03 (Casefile) [03-15853] (gva)
5/9/03	Filed Paul F. Utrecht for Aplts Civil Appeals Docketing Statement served on 5/7/03 (to CONFATT) [03-15853] [03-15853] (gva)
5/9/03	Prior case 96-16843 Aff/Rv/Rmd Opinion 6/3/98 hw PAR AWT ** TO ANY PANEL PER AWT ** [03-15853] (mw)
6/3/03	Case rejected from Circuit Mediation Program. (sa)
7/9/03	Filed certificate of record on appeal RT filed in DC 7/8/03 [03-15853] (gva)

8/19/03	14 day oral extension by phone of time to file Appellant brief. [03-15853] appellants' brief due 9/5/03; appellees' brief due 10/6/03; the optional reply brief is due 14 days from service of the answering brief. (cg)
9/5/03	Filed original and 15 copies Appellants opening brief (Informal: NO) 56 pages and five excerpts of record in 1volumes; served on 9/5/03 [03-15853] (mhf)
9/12/03	Received Pacific Legal Foundation's amicus curiae brief in original and 15 copies of 24 pages; served on 9/11/03 in support of aplts reversal of judgment; deficient: (mtn to becm am is req). Notified csl. (gva)
9/12/03	Filed original and 15 copies Pacific Legal Found.'s amicus curiae brief of 24 pages; served on 9/11/03 (Parties consent on 1st page of br) [03-15853] (mhf)
9/23/03	Filed motion and deputy clerk order PROMO:(Deputy Clerk: lbb) The City of San Francisco's unopposed motion for an ext of time to file the answering brief is GRANTED. [4851214-1] The answering brief is due 11/5/03. The optional reply brief is due 14 days after service of the ans brf. (Motion recvd 9/9/03) [03-15853] (hh)

11/5/03	Filed original & 15 copies Aple SF City and County brief, 51 pages, 5 Supplemental Excs w/red covers; served on 11/5/03 minor defcy: (5 white covers for excs are req). Notified csl. (gva)
11/14/03	Filed original & 15 copies California State Association of Counties, League of California Cities and International Municipal Lawyers Association's amicus curiae brief of 31 pages in support of aples [all parties consent on page 2]; served on 11/12/03. [03-15853] (gva)
11/17/03	Filed motion of Appellant and deputy clerk order: (Deputy Clerk: lbs) Appellants' motion for an extension of time to file the optional reply brief is granted. The optional reply brief is due December 19, 2003. (Motion recvd 11/12/03) [03-15853] (ru)
11/17/03	Received Appellee SF City and County satisfaction of (minor) brief deficiency: (white covers for excs) (Records) [03-15853] (gva)
12/18/03	Calendar check performed [03-15853] (mw)
12/19/03	Filed original and 15 copies appellants San Remo Hotel L.P., Thomas Field, Robert Field, T&R Investment Corp. reply brief, (Informal: No) 27 pages; served on 12/19/03 [03-15853] (ru)
1/5/04	Calendar materials being prepared. [03-15853] [03-15853] (mw)

1/9/04 CALENDARED: SAN FRAN Mar 10 2004 900 am Courtroom 3 ** moved to Mon Mar 8 2004 900 am ** [03-15853] (aw)

3/2/04 Filed order (Ferdinand F. FERNANDEZ, Michael D. HAWKINS, Sidney R. THOMAS): On the Court's own motion, oral argument is moved from Wednesday, 3/10/04, ot Mondat, 3/8/04, in SF CA. (phoned/faxed) [03-15853] (gva)

3/8/04 ARGUED AND SUBMITTED TO Ferdinand F. FERNANDEZ, Michael D. HAWKINS, Sidney R. THOMAS [03-15853] (kkw)

4/14/04 FILED OPINION: AFFIRMED. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Ferdinand F. FERNANDEZ; Michael D. HAWKINS, author; R. THOMAS) FILED AND ENTERED JUDGMENT. [03-15853] (gva)

4/15/04 Rec'd notice of change of address from R. S. Radford for Amicus Pacific Legal Found., Amicus Pacific Legal Found. dated 4/14/04. 3900 Lennane Drive Suite 200, Sacramento, CA 95834 (Casefile) [03-15853] (gva)

4/21/04 Filed motion & clerk order (Deputy Clerk: gva) Granting aplts' mtn to extend time in which to file a petition for rehearing en banc to and including 5/5/04. (mtn rcvd 4/21/04) [5040376-1] [03-15853] (gva)

4/21/04 Rec'd notice of amended change of address from R. S. Radford for Amicus Pacific Legal Found., served on 4/20/04 [same as previous ntc of chg. of add] (Casefile) [03-15853] (gva)

4/22/04 Received letter dated 4/21/04 from Andrew Schwartz for City and County of San Francisco re: ... to correct error in the opinion (Panel) [03-15853] (gva)

4/28/04 Filed Aplts San Remo Hotel L.P., Thomas Field, Robert Field, T&R Investment Corp.'s motion to strike and for sanctions; served on 4/28/04 (Panel) [03-15853] served on [5049229] [03-15853] (gva)

4/29/04 Filed Appellee SF City and County response opposing appellant's motion sanction attorney [5049229-1] served on 4/29/04 (PANEL) [03-15853] (mhf)

5/5/04 [5053966] Filed original & 50 copies Aplts' petition for panel rehearing and petition for rehearing en banc of 17 pages [4154 words]; served on 5/5/04 (PANEL AND ALL ACTIVE JUDGES) [03-15853] (gva)

5/6/04 Received Aplts' supplemental proof of service (Casefile) [03-15853] (gva)

5/7/04 Filed order (Ferdinand F. FERNANDEZ, Michael D. HAWKINS, Sidney R. THOMAS): The panel remains satisfied with its April 14, 2004 opinion, including quotations from this ct's earlier opinion and

therefore will do nothing in response to Def/Aple San Francisco's letter of April 21, 2004. Pla/Aplt San Remo Hotel's motion to strike and for sanctions is denied as moot. [5049229-1] [03-15853] (gva)

5/12/04 Received Pacific Legal Foundation's amicus curiae brief in original & 50 copies of 6 pages; in support of aplts' petition for rehearing en banc; deficient: (mtn to becm am pending); served on 5/11/04 (Panel) [03-15853] (gva)

5/12/04 Filed Pacific Legal Foundation's motion for leave to brief amicus curiae in support of aplts' petition for rehearing en banc; served on 5/11/04 (Panel) [5062535] (gva)

6/9/04 Filed order (Ferdinand F. FERNANDEZ, Sidney R. THOMAS) The application of Pacific Legal Foundation for leave to fiel brief amicus curiae in support of rehearing en banc is granted. The br is ordered filed. ... The petition for rehearing en banc is DENIED. [5062535-1] [5053966-1] [03-15853] (gva)

6/9/04 Filed original & 50 copies Pacific Legal Foundation amicus curiae brief of 6 pages; in support of aplts' petition for rehearing en banc; served on 5/11/04 (Panel And All Active Judges) [03-15853] (gva)

6/17/04 MANDATE ISSUED [03-15853] (gva)

9/17/04 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 04-340 filed on 9/7/04. (Panel) [03-15853] (gva)

12/15/04 Received letter from the Supreme Court dated 12/10/04 re: The petition for writ of certiorari is granted limited to Question 1 presented by the petition for certiorari (Panel)[03-15853] (gva)

NINTH CIRCUIT COURT OF APPEALS

No. 96-16843

Northern District of California
No. C 93 1644 DLJ

[Filed January 13, 1997]

SAN REMO HOTEL L.P.,	)
THOMAS FIELD, ROBERT FIELD,	)
and T & R INVESTMENT CORP.,	)
Plaintiffs-Appellants,	)
	)
vs.	)
	)
CITY AND COUNTY OF SAN	)
FRANCISCO, a Municipal	)
Corporation, on behalf of the	)
DEPARTMENT OF CITY PLANNING,	)
BOARD OF PERMIT APPEALS,	)
DEPARTMENT OF BUILDING	)
INSPECTION and BOARD OF	)
SUPERVISORS,	)
Defendants-Appellees.	)
	)

Appeal from the Judgment of the
United States District Court
for the Northern District of California

APPELLANT'S OPENING BRIEF

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ISSUES ON APPEAL

1. Should this Court order Pullman abstention until the state court proceedings regarding the San Remo Hotel are completed?

2. Did the Field brothers' pursuit of administrative relief equitably toll the statute of limitations on the claim that the Hotel Ordinance is facially unconstitutional.

3. Is the Hotel Ordinance facially unconstitutional because it singles out a few hotel owners, like the Field brothers, to bear the cost of remedying San Francisco's homeless problem?

4. Did the state courts provide an adequate forum in 1993 to obtain compensation for the City's taking of the Field brothers' property?

5. Should a state administrative proceeding that is subject to pending review proceedings in state court be given preclusive effect?

* * *

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STANDARDS OF REVIEW

1. Pullman abstention.

The standard of review for should be de novo because it is an issue that can be raised for the first time on appeal. Richardson v. Koshiba, 693 F.2d 911, 915 (9th Cir. 1982); but see Kollsman v. Los Angeles, 737 F.2d 830 (9th Cir. 1984), cert. denied, 469 U.S. 1211 (1985) (applying abuse of discretion standard).

2. Equitable tolling of the statute of limitations;

3. Facial unconstitutionality of the Hotel Ordinance; and

4. Ripeness of the as applied taking claim.

The standard of review for the above issues is de novo because they were raised by a motion for summary judgment. United States v. Williams, 994 F.2d 646 (9th Cir. 1993).

5. Administrative res judicata.

The District Court denied a request for leave to amend the complaint, which is ordinarily subject to a "strict" abuse of discretion standard. United States v. Pend Oreille Pub. Util. Dist. No. 1, 926 F.2d 1502, 1511-1512 (9th Cir. 1991). But, in this case, the denial was based on the Court's legal conclusion about the preclusive effect of the Board's decision, which is subject to de novo review. In re Russell, 76 F.3d 242, 244 (9th Cir. 1996) (res judicata and collateral estoppel reviewed de novo).

[p.19]

ARGUMENT

I. THIS COURT SHOULD ORDER ABSTENTION UNDER PULLMAN TO ALLOW THE STATE COURTS TO RESOLVE DISPUTED ISSUES OF STATE LAW.

In the District Court, the City requested abstention under Colorado River. The District Court properly rejected abstention on that ground. ER 81; CR 34 at 16. In support of its motion for summary judgment, the City again argued for abstention, based on American National Fire Ins. Co. v. Hungerford, 53 F.3d 1012, 1017 (9th Cir. 1995). In response, the Field brothers argued that if any abstention was appropriate, it should be under Pullman. CR 116 at 23.

While the issue of Pullman abstention was not fully briefed in this action, it was briefed and decided by the District Court in a related case. ER 121. Moreover, Pullman abstention concerns the relationship between state and federal courts; therefore, it can even be raised at oral argument on appeal. Richardson v. Koshiba, 693 F.2d 911, 915, 917 (9th Cir. 1982).

In Pullman, the Texas Railroad Commission issued a regulation requiring that all sleeping cars be in the charge of a Pullman conductor -- all of whom were white -- and not in the charge of a Pullman porter -- all of whom were black. The plaintiffs challenged that regulation on the grounds that it exceeded the Railroad Commission's power under state laws and it [p.20] violated the United States Constitution. The Railroad Commission claimed the regulation was authorized by a state law, but that law was unclear. The Supreme Court

held that the district court should have stayed the federal case until the state courts had decided the unclear state law issue. Railroad Commission of Texas v. Pullman Company, 312 U.S. 496, 501 (1941). The reason for that decision was that if the plaintiffs won on the state law issue, the federal courts could avoid adjudicating the constitutional issue. Pullman, supra, 312 U.S. at 498.

The Ninth Circuit precedents are virtually unanimous in finding that Pullman abstention is required in land use cases.[3] Sinclair Oil Co. v. Santa Barbara, 96 F.3d 401, 409-410 (1996) (abstention ordered for ripe takings claim); Pearl Investment Co. v. San Francisco, 774 F.2d 1460 (9th Cir. 1985), cert. denied, 476 U.S. 1170 (1986); Kollsman v. Los Angeles, 737 F.2d 830 (9th Cir. 1984), cert. denied, 469 U.S. 1211 (1985); Santa Fe Land Improvement Co. v. Chula Vista, 596 F.2d 838 (1979) (reversing dismissal order and holding that stay proper course when abstaining); Isthmus Landowners Ass'n v. California, 601 F.2d 1087 (1979) (reversing dismissal order and remanding with directions abstain under Pullman by staying the federal action pending adjudication of state issues in state court); Sederquist [p.21]v. Tiburon, 590 F.2d 278 (1978); Newport Investments, Inc. v. Laguna Beach, 564 F.2d 893 (1977); Rancho Palos Verdes Corp. v. Laguna Beach, 547 F.2d 1092 (1976).

The Ninth Circuit applies a three pronged test to determine whether Pullman abstention is appropriate:

---

[3] One exception is Shamrock Development Co. v. Concord, 656 F.2d 1380 (9 Cir. 1981), which was distinguished by Kollsman, 737 F.2d at 837 n. 19. Kollsman also distinguishes Midkiff v. Tom, 702 F.2d 788 (9 Cir. 1983), reversed on other grounds sub nom. Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).

> (1) the case touches on a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy, and (3) the possible determinative issue of state law is uncertain. Confederated Salish v. Simonich, 29 F.3d 1398, 1407 (9th Cir. 1994).

In this case, the first prong is satisfied because the Ninth Circuit has consistently held that land use cases touch a sensitive area of social policy. E.g., Pearl Investment, supra, 774 F.2d 1460.

The second prong is satisfied because the Field brothers asserted state law claims, including a claim under the Permit Streamlining Act, as well as federal claims under the Constitution and 42 U.S.C. § 1983. ER 82-107; CR 58. If the Field brothers prevail on the state law claims, that will establish their right to operate a tourist hotel -- obviating the need to adjudicate their claim that they have a federal constitutional right to operate a tourist hotel. See Kollsman, 737 F.2d at 833-834 (abstention required when state law claims

* * *

NINTH CIRCUIT COURT OF APPEALS

No. 96-16843

Northern District of California
No. C 93 1644 DLJ

[Filed March 12, 1997]

SAN REMO HOTEL L.P., THOMAS FIELD, ROBERT FIELD, and T & R INVESTMENT CORP., Plaintiffs-Appellants,	)
vs.	)
CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, on behalf of the DEPARTMENT OF CITY PLANNING, BOARD OF PERMIT APPEALS, DEPARTMENT OF BUILDING INSPECTION and BOARD OF SUPERVISORS, Defendants-Appellees.	)

Appeal from the Judgment of the
United States District Court
for the Northern District of California

APPELLANTS' REPLY BRIEF

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Plaintiffs and appellants San Remo Hotel, L.P., T & R Investment Corp., Thomas Field and Robert Field (all appellants are referred to as the "Field brothers") submit this reply brief in support of their appeal.

INTRODUCTION.

This appeal primarily raises procedural issues about whether or when the Field brothers are entitled to present their claims about San Francisco's Hotel Ordinance and the City's administrative determinations about the San Remo Hotel in a federal court.

The Field brothers want the federal courts to rule on the substantive merits of their claims: Is the Hotel Ordinance constitutional? Did the City deprive the Field brothers of their property in violation of the takings clause and the equal protection clause?

The Field brothers recognize that federalism concerns may require the federal courts to abstain under Railroad Commission of Texas v. Pullman Company, 312 U.S. 496 (1941), but a federal court should eventually pass on the constitutionality of the Hotel Ordinance and the City's actions.

The City believes that none of the Field brothers' claims should ever be adjudicated on the merits by a federal court. Instead, the City believes that all of the Field brothers' claims should not be considered by the federal courts for one procedural reason or another.

[p.2]

Why does the City not want a federal court to rule on the merits? The answer is clear: If reviewed on the merits, the Hotel Ordinance will not survive constitutional scrutiny in a federal court. Therefore, the City invokes one procedural doctrine after another in an attempt either to avoid constitutional scrutiny altogether or to force the federal constitutional claims into state court. Ultimately, the City would have this Court treat the Field brothers' federal constitutional rights to their property as a poor relative of the other rights secured by the federal constitution. See Dolan v. Tigard, 114 S.Ct. 2309, 2320 (1994).

This Court should reject the City's position and decide this appeal in a way that allows the Field brothers to have their federal claims adjudicated in a federal court.

I. THE CITY MISREPRESENTED THE FACTS OF THIS CASE.

The City's Statement of the Case includes false statements about the facts in this case -- statements that are disproven by the Supplemental Excerpts of Record ("SER") submitted by the City.

The City says that:

> On September 25, 1991, in compliance with the HCO, plaintiffs submitted an Initial Unit Usage Report to the City. SER 77-78. In the Report, plaintiffs stated that as of September 23, 1979, there were 61 residential units and 0 tourist units in the San Remo.

* * *

[p.8]

argument, the Field brothers reiterated that abstention under Pullman may be appropriate in this case. Reporter's Transcript of July 3, 1996 at 37.

The issue of abstention was clearly raised in the District Court.[4] In fact, the Field brothers raised Pullman abstention one month before the summary judgment hearing -- unlike the plaintiff in Richardson who waited until the day before the summary judgment hearing.

Even if this Court concludes that the Pullman issue was not properly raised in the District Court, the importance of Pullman abstention to the harmonious working of the federal and state court makes it an issue that both the District Court and this Court should consider sua sponte. Richardson, supra, 693 F.2d at 915; accord Belloti v. Baird, 428 U.S. 132, 143 n. 10 (1976).

B. PULLMAN ABSTENTION IS PROPER IN THIS CASE BECAUSE THE STATE COURT LITIGATION COULD MOOT THE FEDERAL CLAIMS.

The City does not dispute that the first and third prongs of the Pullman test are satisfied: (1) This case "touches on a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its [p.9] adjudication is open"; and (3) "[T]he possible determinative

---

[4] Moreover, the district court appears to have believed that it adopted some form of abstention in denying leave to amend to state an equal protection claim. See, infra, at 21.

issue of state law is uncertain." Confederated Salish, supra, 29 F.3d at 1407.

The City's only argument concerns the second prong: "Constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy." Confederated Salish, supra, 29 F.3d at 1407. Essentially, the City's argument boils down to the proposition that the District Court's ruling on the federal claims was correct and, therefore, there is no need to delay adjudication of the federal claims until the state law claims are resolved.

There are two problems with the City's argument: (1) The District Court did not correctly decide the federal questions raised by this appeal (See, infra, at 11-23); and (2) The test for Pullman abstention is not whether defendant should prevail on the federal constitutional questions -- the test is whether the state law claims "could obviate the need to adjudicate the federal constitutional claims." Kollsman, supra, 737 F.2d at 833-834 (emphasis added).

The Field brothers filed a state court proceeding seeking judicial review of a decision by the San Francisco Board of Permit Appeals ("Board") that they are required to obtain a conditional use permit to rent the San Remo Hotel's rooms to tourists. The Field brothers presented undisputed evidence that the San Remo Hotel is a prior non-conforming use because it was [p.10] actually used for tourist rentals since before the Planning Code was amended. The Board's decision to reject their claim was both an equal protection violation and a violation of state law because it was wrong. If the Field brothers prevail on their state law claim, they will be entitled to operate a tourist hotel. That result in the state court would moot the issue of whether the Board's decision was a violation of equal protection.

In addition, once there was a determination that a tourist hotel was a legal use of the San Remo Hotel under the City Planning Code, then the Field brothers would be entitled to invoke the Ellis Act (California Government Code § 7060 et seq.) and the property would no longer be subject to the Hotel Ordinance. Bullock v. San Francisco, 221 Cal.App.3d 1072, 271 Cal.Rptr. 44 (1990). Alternatively, the state court may determine that the Hotel Ordinance ransom was improper under state law. Either result would moot the issue of whether the Hotel Ordinance is a facial or an as-applied taking under the Fifth Amendment to the United States Constitution.

In short, the City's argument that determination of the state law claims cannot moot the federal constitutional issues is simply wrong.

* * *

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

No. C-93-1644-DLJ

[Filed November 14, 2002]

THE SAN REMO HOTEL L.P., THOMAS FIELD, ROBERT FIELD and T & R INVESTMENT CORP., Plaintiffs,	)
vs.	)
CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, on behalf of the DEPARTMENT OF CITY PLANNING,	)

CITY PLANNING COMMISSION,)
BOARD OF PERMIT APPEALS, and)
BOARD OF SUPERVISORS,)
Defendants.)
)

THIRD AMENDED COMPLAINT

THE PARTIES

1. Plaintiff The San Remo Hotel L.P. is a California limited partnership with its principal place of business in the City and County of San Francisco.

2. Plaintiffs Thomas Field and Robert Field are citizens of the State of California and are residents of the City and County of San Francisco.

3. Plaintiff T & R Investment Corp. is a California corporation with its principal place of business in the City and County of San Francisco.

4. Defendant City and County of San Francisco (the "City") is a California municipal corporation, acting under color of law. The City has enforced its regulatory schemes through its Department of City Planning, City Planning Commission, Board of Permit Appeals, and Board of Supervisors.

JURISDICTION

5. This action arises under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

6. This action also seeks to redress the deprivation, under color of state law, of civil rights secured by the Fifth and Fourteenth Amendments of the United States Constitution pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983.

7. This action also arises under 28 U.S.C. §§ 2201 and 2202 in that plaintiffs seek a declaration that the City's ordinances, independently and in concert with each other, facially and as applied, violate plaintiffs' constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

GENERAL ALLEGATIONS

8. Plaintiffs own and operate the San Remo Hotel, which is located at 2237 Mason Street in North Beach. The San Remo Hotel is subject to two overlapping regulatory schemes enacted by the City: Chapter 41 of the San Francisco Administrative Code, the Residential Hotel Unit Conversion and Demolition Ordinance (the "Hotel Ordinance"), and San Francisco Planning Code § 722 et seq., the North Beach Neighborhood Commercial Zoning Ordinance (the "Zoning Ordinance").

9. The San Remo Hotel was constructed in 1906. In 1916, the City approved an application to alter the building and convert it into a hotel and restaurant. Since at least the mid-1950s, the San Remo Hotel has been operated as a tourist hotel.

10. When plaintiffs purchased the San Remo Hotel in 1970, it was zoned C-2 Commercial and there were no restrictions on its use as a tourist hotel. In 1970, the City's Planning Code made no distinction between residential or

tourist use of hotel properties -- both were allowed in a C-2 Commercial zone.

11. When plaintiffs purchased the San Remo Hotel it was in a state of extreme disrepair. In 1973, the City recorded a condemnation notice against the property and required plaintiffs to make substantial repairs to bring the building into compliance with the codes governing commercial hotels. Plaintiffs spent more than $250,000 on the repairs and in 1976 the City issued a Certificate of Final Completion and Occupancy for a 62 room hotel. In 1977, the City issued a Permit of Occupancy authorizing the operation of a hotel with 62 guest rooms.

12. The San Remo Hotel is not designed for residential use: The guest rooms are about 100 square feet without private baths, and without any private or shared cooking facilities. Instead, the San Remo Hotel provides the normal amenities of a hotel: There is a front desk clerk. There is a restaurant. Linens are changed daily.

13. From 1916 to the present, the guest rooms in the San Remo Hotel have been rented primarily to transient and tourist guests on a commercial basis. From at least 1970 through present, the City has collected transient hotel taxes from the commercial use of the San Remo's hotel rooms. In 1987, the City conducted an audit to collect additional tourist hotel taxes from the San Remo Hotel. Each year, from 1970 through present, the City issued a hotel license, which does not distinguish between tourist/commercial and residential use, for the San Remo Hotel.

1981 HOTEL ORDINANCE

14. Before 1979, residential hotels were commonly known as transient hotels which rented rooms by the day, week, or month as commercially practicable. Thus, the rooms were rented on a daily basis during the summer tourist season and on a weekly or monthly basis during the winter when there were fewer tourists. These transient hotels, like most hotels, were located in commercial districts.

15. In 1979, the City enacted a temporary moratorium on the conversion of certain residential hotel rooms. Even after City Attorney George Agnost advised the Board that the 1981 Hotel Ordinance was unconstitutional, the Board adopted it.

16. The City did not provide notice of the temporary moratorium, the 1981 Hotel Ordinance, or any of the subsequent versions of the Hotel Ordinance to plaintiffs or any other hotel owners. The City Attorney issued formal Opinion No. 81-54 that no notice was required because the 1981 Hotel Ordinance was not a land use regulation.

17. The stated purpose of the 1981 Hotel Ordinance was to preserve hotel units for residential use by low income, disabled and homeless persons, by restricting the ability of hotel owners to convert (i.e., change the use from residential to tourist), alter, replace, or demolish their hotels.

18. The 1981 Hotel Ordinance established seasonal restrictions on the rental of regulated hotel rooms which prohibited the owner from renting vacant hotel units designated as residential to tourists during the winter months only. Most significantly, the 1981 Hotel Ordinance permitted the unrestricted tourist/commercial use of residentially

designated units during the summer (May through September). In addition, the 1981 Hotel Ordinance allowed the tourist and residential units to "float". That is, unlike a zoning regulation that allows a certain use on the ground floor and a different use on upper floors, the use of any particular room was not restricted by the Hotel Ordinance. Instead, it limited the number of rooms that may be used for tourists on any day.

19. The 1981 Hotel Ordinance restricted the use of residentially designated units during the winter months unless a hotel owner applied for a permit to convert under the law. A permit to convert could only be issued if a hotel owner paid the City ransom in the form of providing replacement housing or paying a fee equal to 40% of the cost of constructing replacement units and 100% of the cost of site acquisition. The 1981 Hotel Ordinance also imposed civil and criminal penalties for violations.

20. When the 1981 Hotel Ordinance was enacted, the City Attorney issued Opinion No. 81-54 concluding that:

> The residential hotel ordinance does not change in any way the definition or delineated boundaries of any use, height or bulk districts, or the underlying enumerated permitted uses on the property of the applicable zoning regulations.

The City Attorney also concluded that the 1981 Hotel Ordinance did not change the existing classification of hotels as "hotels", which were a commercial use under the Planning Code:

> In the case of hotels, the City Planning Code makes no distinction between the use of a hotel devoted to

> permanent residents or to tourists; the basic land use category is hotel.

RE-ZONING

21. Plaintiffs are informed and believe and therefore allege that: Notwithstanding the City's knowledge that the 1981 Hotel Ordinance was unconstitutional, the City decided to enact it. However, the City decided to further its goal of imposing unconstitutional restrictions on the use of hotels by changing the zoning regulations throughout the City so that it could continue to impose the unconstitutional restrictions even if a Court determined that the Hotel Ordinance was unconstitutional. This was accomplished through a series of interim rezonings, which were finalized after the California Legislature enacted the Ellis Act, Government Code § 7060 et seq.

22. The Ellis Act prohibits local governments from compelling property owners to remain in the residential rental business. The City recognized that the Ellis Act would preempt the Hotel Ordinance, but it also perceived a loophole in the Ellis Act: It does not preempt local zoning ordinances. Government Code § 7060.1(b). Therefore, the City amended the Planning Code to impose a new conditional use permit requirement for hotels so that it would have the ability to enforce the Hotel Ordinance by imposing discretionary conditions on those permits.

23. The City enacted 4 different interim zoning ordinances in a period of 5 years that the City contends limit plaintiffs' use of the San Remo Hotel, all without notice to plaintiffs. In 1982, the City enacted an interim RC-3 District which purported to require conditional use authorization for conversion to tourist hotel use. A 1984 interim re-zoning

ordinance entitled Interim North Beach Neighborhood Commercial Housing Conservation District conceded that the 1982 interim re-zoning was legally defective and purported to require conditional use authorization for conversion of any dwelling units or other housing. The notice sent to affected property owners of this zoning change only described possible restrictions to the conversion of dwelling units, a use the City admits does not include residentially designated hotel rooms. In 1985, without notice, the City adopted the North Beach Neighborhood Commercial Study District which purported to require conditional use authorization for conversion to tourist use. Throughout these years of repeated interim rezonings, plaintiffs continued to operate their hotel as a primarily tourist use as permitted by the 1981 Hotel Ordinance. In reliance on their commercial hotel rights, plaintiffs expended more than $200,000 for additional improvements to the property. The City continued to issue plaintiffs a hotel license each year and to collect hotel taxes from plaintiffs for their commercial/tourist rentals.

24. In 1987, the City enacted the Zoning Ordinance, which created the North Beach Neighborhood-Commercial District ("NBNCD"). The City's stated purpose was "to ensure the livability and attractiveness of North Beach." The Zoning Ordinance requires a conditional use authorization for new tourist hotels. The NBNCD classifies residential hotels based upon their use from August 22 to September 23, 1979, rather than the actual use in 1987. Planning Code § 790.47. The NBNCD does not recognize a lawful nonconforming use that arose after 1979 and before 1987, when the NBNCD was enacted.

1990 HOTEL ORDINANCE

25. On May 12, 1990, the City enacted a revised version of the Hotel Ordinance (the "1990 Hotel Ordinance"), which unconstitutionally restricted the rights of ownership and use of plaintiffs' private property in the following ways:

(a) The 1990 Hotel Ordinance no longer allowed unlimited summer tourist use of residential units, but only allowed 25% of residential units to be used for tourists during the summer. Hotel Ordinance § 41.19. And, those rooms could be rented to tourists only if those rooms were rented at least 50% of the time to permanent residents during the winter months. Hotel Ordinance § 41.19(a)(2). Those residential rentals would subject the rooms to the rent eviction controls of the San Francisco Residential Rent Stabilization and Arbitration Ordinance, effectively eliminating the possibility of using these rooms as historically permitted tourist rentals during the summer season.

(b) The 1990 Hotel Ordinance substantially increased the amount of the replacement housing fee from 100% of the cost of site acquisition plus 40% of the cost of construction of replacement units to 100% of the site cost plus 80% of the construction cost. Hotel Ordinance § 41.13(a)(4).

(c) Section 41.3(m) of the 1990 Hotel Ordinance expressly admits that its underlying purpose for nearly doubling the fee was the reduction in public funding for housing:

> Federal, state and local funds were incorrectly assumed [in 1981] to be available and sufficient to make up the shortfall between the 40% in-lieu fee and actual replacement costs. For example, in 1979 the

federal government was spending 32 billion dollars on housing and is spending only 7 billion dollars in 1989.

(d) The 1990 Hotel Ordinance fails to provide any administrative hearing procedure for relief on grounds of economic hardship, and fails to consider whether hotel owners may be precluded from obtaining a fair return on their investment if they are not allowed to use the property for commercial tourist use.

(e) The 1990 Hotel Ordinance arbitrarily mandates oppressive criminal and civil penalties for violation of its provisions.

EFFECT OF 1981 AND 1990 HOTEL ORDINANCES ON THE SAN REMO HOTEL

26. The 1981 Hotel Ordinance required the operator of each hotel in San Francisco to make a declaration specifying the number of rooms occupied by individuals who had resided in their hotel rooms for 32 days or more as of September 23, 1979. Based on that declaration, the City issued an initial unit usage report to the hotel operator certifying the number of residential and tourist units were permitted in the building. This designation occurred without regard to nor mention of the zoning regulations applicable to the property.

27. In 1981, the San Remo Hotel was operated by Jean Iribarren, who leased it from the plaintiffs. Mr. Iribarren, who did not speak English fluently, submitted a false declaration, stating that all of the rooms in the San Remo Hotel were occupied by persons who had resided in their rooms for more than 32 days. In fact, fewer than 10 of the rooms were actually occupied by persons for more than 32 days. Based on Mr. Iribarren's false declaration, the City

classified all 62 of the rooms in the San Remo Hotel as residential under the Hotel Ordinance.

28. Plaintiffs did not receive any notice that a declaration was required nor any notice that Mr. Iribarren had submitted a false declaration. The 1981 Hotel Ordinance required that any appeals be filed within 10 days after the initial unit usage report was issued by the City. Plaintiffs could not have filed an appeal because they had no notice of the false declaration nor the City's initial usage report until after the appeal deadline had expired.

29. The 1981 Hotel Ordinance had little impact on plaintiffs. Even though all of the rooms were designated residential units, the San Remo Hotel was able to operate primarily as a tourist hotel because the 1981 Hotel Ordinance allowed unlimited tourist use of residential units from May 1 to September 30.

30. The 1990 Hotel Ordinance had an enormous impact on the San Remo Hotel. Instead of having the right to keep all of the rooms vacant during the winter months so that those rooms would be available for use by tourists during the summer months, plaintiffs were required to rent the rooms to residents during the winter months, thereby subjecting them to eviction controls under Rent Control. And, even if plaintiffs succeeded that only allowed 25% of the rooms to be used for tourists.

31. While the 1990 Ordinance did allow for hotels to apply for additional tourist use, plaintiffs could not rely on that application process because the 1990 Ordinance limited that to a total of 60 rooms in the entire City, i.e., out of more than 18,000.

32. Plaintiffs could not operate their business on the assumption that the San Remo Hotel would be the only successful applicant for such rooms. Moreover, plaintiffs could not postpone their decision until after the City acted on those future applications by plaintiffs because they would have been required to pay the nearly-doubled replacement housing fee newly imposed by the 1990 Ordinance.

ADMINISTRATIVE PROCEEDINGS

33. As a consequence, in May 1990, plaintiffs filed an application with the City to convert the San Remo Hotel's residentially designated hotel rooms to tourist use under the 1990 Hotel Ordinance. The City refused to act on the application until 1997.

34. After plaintiffs filed the conversion application under the 1990 Hotel Ordinance, the Planning Department informed plaintiffs that the Zoning Ordinance defines the rooms at the San Remo Hotel as group housing units and therefore plaintiffs must obtain a conditional use permit under the Planning Code to convert to a tourist hotel. The City contended that the false declaration submitted by Mr. Iribarren under the 1981 Hotel Ordinance resulted in an abandonment of plaintiffs' commercial zoning rights.

35. In July 1990, plaintiffs filed applications for a conditional use permit and environmental review under protest. After a one year delay, the City finally issued a Final Negative Declaration stating that the continued tourist operation of plaintiffs' hotel would not have a significant effect on the environment. Thereafter, the City repeatedly and steadfastly refused to schedule a hearing on plaintiffs' application for conditional use authorization. In June 1992, plaintiffs invoked the protections of the Permit Streamlining

Act, California Government Code § 65920 et seq., which imposes strict deadlines for action by government agencies on permit applications. Throughout the City's delay in acting on the permit applications, plaintiffs continued to insist that no conditional use permit could be lawfully required in this case.

36. Finally, on August 20, 1992, in direct response to plaintiffs' invocation of the Permit Streamlining Act, the City scheduled a public hearing on plaintiffs' application for a conditional use permit. On the day of the public hearing, the City Attorney advised plaintiffs that the Planning Commission was without jurisdiction to adjudicate plaintiffs' claim that the San Remo Hotel was a lawful non-conforming or permitted conditional use as defined by the Zoning Ordinance. The City Attorney further advised plaintiffs that only the City's Board of Permit Appeals could make such a finding. Plaintiffs agreed to delay the Planning Commission hearing so that the Board of Permit Appeals could hear their claims. The City's conduct throughout the administrative proceedings was intended to prevent plaintiffs from seeking judicial relief.

37. On or about September 9, 1992, the Zoning Administrator issued a written determination that the San Remo Hotel's 62 rooms are "group housing" units and a residential hotel as defined by Planning Code § 790.47.

38. On or about September 21, 1992, plaintiffs filed a timely administrative appeal to the Board of Permit Appeals, alleging that the Zoning Administrator improperly applied the relevant Planning Code provisions. Plaintiffs also alleged that the classification of the San Remo as a residential use under the Planning Code denied plaintiffs due process of law, constituted a taking of property without just compensation, and denied plaintiffs equal protection of the laws. On or about November 12, 1992, the Zoning Administrator issued

a supplemental determination restating his classification of the San Remo as a residential use under the Planning Code.

39. In 1990, the City first claimed that the San Remo Hotel lost its historic, commercial zoning classification because the City had classified the rooms as residential units under the 1981 Hotel Ordinance. In the administrative proceedings, the Fields presented undisputed proof of ongoing, actual and lawful commercial tourist use of the San Remo Hotel since at least 1971. The fact that the San Remo Hotel was operated as a commercial, tourist hotel when the City changed the zoning in 1987 is not contradicted by the evidence in the administrative record.

40. Although the Planning Code does not distinguish between residential and tourist/commercial hotels and the Planning Code does not define group housing to include residential hotels, the City contended that by "administrative practice" residential hotels rooms are treated as group housing. The City arbitrarily and without any legal basis insisted that the tourist use actually maintained by plaintiffs, which was legal under the Hotel Ordinance, was not a prior non-conforming use because it was only allowed by "special permission" of the Zoning Administrator and since 1982 the City Planning Code has prohibited any tourist use at all by the San Remo Hotel. The City offered no documents or other evidence that this "special permission" was contemporaneously granted by the Zoning Administrator. The City did not offer evidence of actual use in 1987; instead, relying on its argument that the designation under the 1981 Hotel Ordinance determined the legal use of the San Remo Hotel. The City made that argument notwithstanding a 1981 City Attorney Opinion (No. 81-54), which concluded that the Hotel Ordinance is "not a land use regulation" and

that it does not render any existing structure or use a non-conforming structure or use.

41. On December 9, 1992, the Board of Permit Appeals agreed with the City's argument and determined that, although the 1981 Hotel Ordinance had allowed tourist use of the residential units, that use was illegal. Therefore, the Board concluded that the San Remo Hotel was not a prior nonconforming tourist use and plaintiffs were required to obtain a conditional use permit to continue renting any rooms to tourists.

42. The President of the Board of Permit Appeals stated that it could not rule on the constitutionality of the laws involved in the case, but his view was that the City has forced small hotel owners to assume the social burden of supplying affordable housing, which should be borne by every taxpayer.

43. After plaintiffs' request for rehearing was denied on January 13, 1993, the Board of Permit Appeals's decision and order became final.

44. On January 21, 1993, the Planning Commission approved plaintiffs' application for conditional use authorization on condition that plaintiffs mitigate the "loss of housing" by paying $567,000 to the City. In addition to the payment to replace the "lost housing", the Planning Commission's decision also violated plaintiffs' fundamental rights by requiring them to offer lifetime leases to the current residents of the San Remo Hotel. The Planning Commission decision also required plaintiffs to obtain variances from the floor area ratio limitations and parking requirements created by the Zoning Ordinance.

45. Plaintiffs are informed and believe and therefore allege that the City has never imposed both a condition of payment of a replacement housing fee and a requirement of lifetime leases for existing tenants on a conditional use permit for the conversion of residential hotel rooms to tourist use.

46. Plaintiffs would have invoked their right to withdraw the property from residential rental use under the Ellis Act, California Government Code § 7060 et seq., if the City had not imposed the condition requiring them to offer lifetime leases to the existing tenants.

47. The Planning Code provides for an appeal of a conditional use decision of the Planning Commission to the Board of Supervisors. To make that appeal, plaintiffs were required to (and did) obtain the signatures of thirty-five (35) of the neighboring property owners, i.e., at least 20% of the owners of land within a radius of 300 feet from the exterior limits of plaintiffs' property.

48. On April 19, 1993, the Board of Supervisors voted 6-5 to reject plaintiffs' administrative appeal and upheld the decision of the Planning Commission which imposed severe, arbitrary, and unreasonable conditions on plaintiffs' ability to retain their commercial zoning classification. One supervisor called the decision "organized extortion".

49. Because the San Remo Hotel is a lawful commercial use under zoning, the City may not lawfully impose a requirement that plaintiffs seek and justify parking and floor area ratio variances. However, on May 18, 1993, plaintiffs voluntarily filed applications for the variances under protest.

50. Under Planning Code § 306.2, the City Zoning Administrator was required to hold a public hearing within thirty days after accepting the application on May 19, 1993. The City Zoning Administrator failed to comply with this requirement and instead, intentionally delayed until August 24, 1993 when he held a duly noticed public hearing on the variance applications. Despite repeated requests by plaintiffs, the Zoning Administrator refused to act on the variance applications.

51. City Planning Code § 306.4(d)(1) further provides that if the Zoning Administrator fails to act on a variance application within 60 days from the date of conclusion of the hearing, the applicant shall be entitled "to cause the matter to be placed before the City Planning Commission for decision at its next following regular meeting." On October 25, 1993, 60 days following the duly noticed public hearing on the variance applications, plaintiffs requested in writing that the matter be immediately set for decision before the City Planning Commission as required by law. The City refused plaintiffs' request and instead the Planning Commission met in closed door executive session to discuss the San Remo matter. Under California Government Code § 65920 et seq., the variance applications must be deemed approved by operation of law, due to the City's failure to hold a timely hearing and issue a timely decision.

52. On December 11, 1996, plaintiffs paid the $567,000 fee that the City contends is due under the HCO and as a condition of plaintiffs' conditional use permit. That payment was made under protest and was tendered with a letter stating the factual and legal basis for that protest:

A. The requirement of a replacement housing fee in this case effects a taking without just compensation under the Fifth Amendment to the United States Constitution.

B. The amount of the fee imposed is not roughly proportional to the impact of the historically permitted, continued use of the San Remo as a tourist/commercial hotel.

C. The fee fails to substantially advance a legitimate government interest.

53. In or about February 1997, plaintiffs offered lifetime leases to all nine residents at the San Remo Hotel. All but one resident, who subsequently died, are still tenants at the San Remo Hotel.

54. On March 5, 1997, after several demands from plaintiffs, the Zoning Administrator approved the variance applications. On March 17, 1997, the time for an administrative appeal of the variance approvals expired, and the variance approvals became final.

55. On or about March 6, 1997, the Zoning Administrator confirmed that plaintiffs had satisfied all of the conditions of their conditional use permit. Therefore, on or about March 6, 1997, the City imposed the replacement housing fee of $567,000 and issued the HCO permit to convert.

56. Despite the arbitrary regulations imposed on plaintiffs by the regulatory schemes imposed by the City, plaintiffs have maintained a continuous, actual and lawful commercial use of the San Remo Hotel as a tourist hotel.

57. The City's application of the 1990 Hotel Ordinance in conjunction with the Zoning Ordinance to plaintiffs' property forces plaintiffs to bear a disproportionate part of the public burden of providing housing to low income and homeless persons, all without due process of law. Not only were plaintiffs required to pay extortionate replacement housing fee exactions, they were also required to offer lifetime leases to existing residents.

58. The City's application of the 1990 Hotel Ordinance, together with the Zoning Ordinance, deprives plaintiffs of their reasonable investment backed expectations.

59. The effect of City's determinations was that any commercial/tourist use at the San Remo Hotel was in jeopardy unless plaintiffs paid what one supervisor called extortionate ransom to the City.

60. In order for plaintiffs to regain the historically permitted commercial use of their property they were required to pay the City a fee of $567,000 and offer lifetime leases to their tenants.

61. Defendants' unlawful requirements that plaintiffs pay $567,000 and offer lifetime leases to their tenants as a condition of their conditional use permit fails to substantially advance legitimate government interests, and forces plaintiffs to bear the public burden of housing the poor, all without just compensation. Accordingly, defendants' unlawful conditions as applied to plaintiffs amounts to an inverse condemnation of their property.

62. By imposing the $567,000 fee and requiring lifetime leases for plaintiffs' tenants, the City violated plaintiffs' rights under the Fifth and Fourteenth Amendments

to the United States Constitution. Plaintiffs have no plain, speedy or adequate remedy in the ordinary course of the law. Any attempt by plaintiffs to obtain relief in state court was futile because the California Courts have consistently refused to recognize the constitutional defects in the Hotel Ordinance. Therefore, plaintiffs' request for declaratory and injunctive relief as hereinafter set forth is justified.

63. Plaintiffs reasonably and in good faith pursued the administrative remedies described herein to mitigate and/or avoid the damages caused by the facially unconstitutional HCO in 1990. Therefore, under the doctrine of equitable tolling, the statute of limitations was tolled from May 1990 until at least April 19, 1993, when this action was filed.

COUNT ONE

(DECLARATION OF THE UNCONSTITUTIONALITY OF THE REPLACEMENT HOUSING REQUIREMENTS OF THE HOTEL ORDINANCE AS INCORPORATED INTO THE CONDITIONS OF APPROVAL OF PLAINTIFF'S ZONING APPROVAL)

64. Plaintiffs reallege paragraphs 1 to 63.

65. An actual controversy has arisen and now exists between plaintiffs and the City regarding their respective rights and duties in that plaintiffs contend and the City denies that the regulatory controls of the ordinances, separately and in concert, facially and as applied to plaintiffs, violate their rights under the Fifth and Fourteenth Amendments to the United States Constitution.

66. Defendants' legislative and administrative actions fail to substantially advance legitimate government interests

and force plaintiffs to bear the public burden of housing the poor, all without just compensation. Accordingly, defendants' actions violated the Takings Clause of the Fifth Amendment to the United States Constitution.

67. Plaintiffs request a judicial declaration as to the validity of each ordinance facially and as applied to plaintiffs.

68. The conditional use permit approved by the City required plaintiffs to pay the City $567,000 and to offer lifetime leases to their tenants. The enforcement of those conditions unlawfully appropriated private property rights in blatant violation of plaintiffs' constitutional rights.

69. Plaintiffs have devoted several years and a substantial sum in attorneys' fees and costs to exhaust all of the available administrative remedies to regain their commercial zoning classification. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law to redress deprivations of their constitutional rights with respect to the ownership and use of their private property. Proceeding in state court was futile, because despite the fact that courts in other jurisdictions have consistently struck down similar legislative schemes and enactments, the state courts in California have failed to protect the rights asserted herein in other cases. Declaratory and injunctive relief is therefore justified.

COUNT TWO

(DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983)

70. Plaintiffs reallege paragraphs 1 to 69.

71. The City has established a custom, policy, pattern and practice of enforcing the regulatory provisions of the Hotel Ordinance and the Zoning Ordinance, and in particular the replacement housing requirements against plaintiffs, under color of law, and has deprived plaintiffs of the use of their property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

72. Prior to the effective date of any zoning ordinances prohibiting commercial use of the San Remo, plaintiffs had continuously used the San Remo as a commercial, tourist hotel. At all times such commercial use has been pursuant to and authorized by local law. Therefore, plaintiffs possess a vested right to continue operating the San Remo as a lawful, non-conforming tourist hotel.

73. The City's ordinances have been applied in a successful attempt to extort a $567,000 ransom and to require plaintiffs to offer lifetime leases to their tenants without an individualized determination that continued use of the San Remo as a commercial hotel would result in the loss of housing for low-income, elderly, or disabled persons.

74. Defendants' actions have resulted in the taking of plaintiffs' property under the multi-pronged test established by Penn Central Trans. Co. v. New York City, 438 U.S. 104 (1978)

75. Plaintiffs timely sought administrative relief from the City, and the City's administrative determinations of the allowable use of plaintiffs' property are final.

76. Plaintiffs timely sought judicial review of the City's legislative and administrative actions, and brought an inverse condemnation claim under the California Constitution

in the California state courts. San Remo Hotel v. City and County of San Francisco, San Francisco Superior Court No. 950166. The Ninth Circuit decided that this Court should abstain from deciding this case until after a final decision by the state courts. San Remo Hotel v. City and County of San Francisco, 145 F.3d 1095 (1998). After the Ninth Circuit's decision, plaintiffs prosecuted their claims in the state courts through a final decision by the California Supreme Court, which was issued on March 4, 2002. San Remo Hotel v. City and County of San Francisco, 27 Cal.4th 643 (2002).

77. As a result of that decision by the California Supreme Court, plaintiffs received no compensation from the state courts for the taking of their property.

78. The requirements that plaintiffs pay the City $567,000 and offer lifetime leases to their tenants fail to substantially advance legitimate government interests and force plaintiffs to bear the public burden of housing the poor, all without just compensation.

79. Defendants' refusal to permit the "conversion" of the San Remo Hotel absent payment of the $567,000 ransom and an offer of lifetime leases to the tenants fails to substantially advance legitimate government interests, and forces plaintiffs to bear the public burden of housing the poor, all without just compensation. Accordingly, defendants' requirement that plaintiffs pay $567,000 and offer lifetime leases to their tenants, as applied to plaintiffs, amounts to an inverse condemnation of their property.

80. The City's ordinances and its administrative actions regarding the San Remo violate plaintiffs'

constitutional rights in that they fail to substantially advance legitimate government interests as required by the Fifth Amendment.

81. The City's application of its legislative scheme to the San Remo Hotel does not substantially advance a legitimate government interest because there is not a close nexus between the City's requirement of a $567,000 payment and lifetime leases and any public harm that might result from the continued use of the San Remo in its historically permitted commercial manner. Not only is there an abundance of vacant residential hotel units available in San Francisco (the City-wide vacancy rate under both the 1981 and 1990 Hotel Ordinances has remained consistently between 25 and 35%), no residents would be displaced by such continued commercial use. Consequently, unconditional, continued commercial use of the San Remo by plaintiffs would not result in the problems purportedly remedied by the City's ordinances and administrative actions, i.e., a shortage of available housing for low income, elderly, and disabled persons.

82. The application of the City's ordinances to plaintiffs forces them, and a small group of other property owners, to bear the full cost of providing a general public benefit: housing for low income, elderly and disabled San Francisco residents. This violates the Fifth Amendment, which bars Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

83. The provisions of the City's ordinances, in conjunction with defendants' administrative determinations, which allow cash payments to be made in lieu of compliance with the terms of the ordinances, establish that defendants are

simply attempting to extort valuable resources from plaintiffs and other similarly situated property owners. The HCO's requirement of replacement housing fees has been characterized as "ransom" by the California Court of Appeal. Bullock v. San Francisco, 221 Cal. App.3d 1072, 1101 (1990). In striking down a substantially similar regulation, the New York Court of Appeals recognized that a provision of this kind "amounts to just the sort of exaction which could be classified, not as a 'valid regulation of land use but "an out-and-out plan of extortion.'" Seawall Associates v. New York City, 542 N.E.2d 1059, 1070 (1989).

84. Plaintiffs have suffered damages as result of defendants' unconstitutional actions, including the lost revenues from the restrictions on plaintiffs' use of their property, the costs of pursuing multiple administrative proceedings required by the City and the costs of annual administrative hearings imposed by the Hotel Ordinance. Plaintiffs Tom Field and Robert Field have also suffered severe emotional distress, pain, discomfort, anxiety, humiliation and emotional distress.

85. By reason of the City's threatened actions to enforce the unconstitutional provisions of the 1990 Hotel Ordinance through the mechanism of the conditional use authorization required by the Zoning Ordinance, plaintiffs have suffered, and will suffer irreparable harm and hereby request injunctive relief pursuant to 42 U.S.C. § 1983 to restrain the City from violating plaintiffs' constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiffs pray for the following relief:

A. Plaintiffs request a judicial declaration by this Court that the replacement housing provisions of the Hotel Ordinance and the conditional use authorization requirements of the Zoning Ordinance, separately and in concert with each other, whether facially or as applied to plaintiffs in particular, violate plaintiffs' right to Due Process of Law under the Fifth and Fourteenth Amendments to the United States Constitution and that those provisions be declared invalid and unenforceable.

B. Plaintiffs request an award of damages in the sum of $567,000 plus interest at the legal rate from December 11, 1996. Plaintiffs request an award of additional damages according to proof.

C. Plaintiffs request an award of costs and attorneys' fees as permitted by law.

D. Plaintiffs request such other and further relief as the Court deems just and proper.

Dated: November ___, 2002.

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LAW OFFICES OF ANDREW M. ZACKS

PAUL F. UTRECHT
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By_____
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**SUPERIOR COURT FOR THE
STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO**

No. 950166

[Filed December 9, 2002]

SAN REMO HOTEL L.P., a Limited Partnership, THOMAS FIELD, an Individual, ROBERT FIELD, an Individual, and T & R INVESTMENT CORP., a California Corporation, Petitioners and Plaintiffs,	)
vs.	)
CITY AND COUNTY OF SAN FRANCISCO, a California Municipal Corporation, SAN FRANCISCO DEPARTMENT OF CITY PLANNING, SAN FRANCISCO BOARD OF	)

PERMIT APPEALS, ZONING ADMINISTRATOR ROBERT PASSMORE, and DOES 1 through 50. Respondents and Defendants.	)

SECOND AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS AND COMPLAINT FOR DAMAGES

Plaintiffs and petitioners San Remo Hotel L.P., Thomas Field, Robert Field, and T & R Investment Corp. ("petitioners" or "plaintiffs"), petition this Court for a writ of mandate under Code of Civil Procedure § 1094.5, directed to respondents City and County of San Francisco and the San Francisco Board of Permit Appeals (hereafter "respondents") and by this verified petition and complaint allege as follows:

1. Plaintiff and petitioner San Remo Hotel L.P. is a California limited partnership. Plaintiffs and petitioners Thomas Field and Robert Field are limited partners of San Remo Hotel L.P. Plaintiff and petitioner T & R Investment Corp. is a California corporation and the general partner of San Remo Hotel L.P.

2. Defendant and respondent City and County of San Francisco ("City") is a California municipal corporation. The City has taken the actions alleged of herein through defendant and respondent Board of Permit Appeals, defendants Department of City Planning, and Zoning Administrator Robert Passmore.

3. Petitioners are ignorant of the true names of defendants Does 1-50, who are responsible for the injuries alleged in this complaint, and therefore sues those defendants

by fictitious names. Petitioners will amend the complaint to allege their true names and capacities when they are ascertained.

FIRST CAUSE OF ACTION

(PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS)

4. Petitioners are the owners of real property located at 2237 Mason Street in San Francisco, CA, commonly known as the San Remo Hotel ("San Remo"), and bring this petition as parties aggrieved by a determination of defendant and respondent Board of Permit Appeals ("BPA") after an evidentiary hearing as required by law.

5. The BPA is authorized and required by the Planning Code and City Charter to conduct evidentiary hearings and to render final administrative decisions in appeals brought by property owners contesting zoning classifications made by the San Francisco Zoning Administrator. The BPA conducted such a hearing on petitioners' appeal and rendered a final decision upholding the Zoning Administrator's determination that the San Remo is limited to residential use under the Planning Code, and that a conditional use permit is required to regain the San Remo's commercial zoning classification.

6. On or about September 9, 1992, the Zoning Administrator issued a written determination that the San Remo is 62 "group housing" units and a residential hotel as defined by Planning Code § 790.47.

7. On or about September 21, 1992, petitioners filed a timely administrative appeal to the BPA, alleging that the Zoning Administrator improperly applied the relevant

Planning Code provisions. Petitioners also alleged that the classification of the San Remo as a residential use under the Planning Code denied petitioners due process of law, constituted a taking of property without just compensation, and denied petitioners equal protection of the laws. On or about November 12, 1992, the Zoning Administrator issued a supplemental determination restating his classification of the San Remo as a residential use under the Planning Code.

8. On or about November 18, 1992, the BPA held a public hearing on petitioners' administrative appeal. On or about December 9, 1992, the BPA denied petitioners' appeal and affirmed the determination of the Zoning Administrator. After petitioners' request for rehearing was denied on January 13, 1993, the BPA's decision and order became final. A true and correct copy of this decision and order is attached as Exhibit A.

9. The BPA's decision and order is invalid under Code of Civil Procedure § 1094.5 for the following reasons:

a. The BPA committed a prejudicial abuse of discretion in that, it failed to proceed in the manner required by law because:

(1) The BPA decision and order fails to recognize petitioners' right to be classified as a "permitted conditional hotel use" under Planning Code § 179(a)(2), and in that the residential use classification imposed by the Zoning Administrator constituted an inverse condemnation of the San Remo.

(2) In reliance upon petitioners' reasonable investment backed expectations and justifiable reliance on the historical commercial use classification of the San Remo, petitioners expended substantial sums of money in capital

improvements. Therefore, the BPA and the Zoning Administrator were required to classify the San Remo as a tourist hotel use under the Planning Code.

b. The BPA failed to issue sufficient findings to justify its decision as required by law. Moreover, the findings are insufficient because they fail to bridge the analytical gap between the evidence presented and the BPA's decision:

(1) The BPA's finding that the Zoning Administrator "liberally construed the ordinances in order to allow maximum flexibility to the San Remo to rent it to tourists during the summer" is not supported by substantial evidence nor does that finding have any basis in law.

(2) The BPA's finding that petitioners described the San Remo as a residential hotel is irrelevant to petitioners' claim of a permitted conditional use under Planning Code § 179(a)(2).

(3) The BPA's finding that there was "ample proof that the San Remo's expectations could or should have been that the law would be applied towards them in the manner that the City has applied them" is not supported by substantial evidence in the administrative record.

(4) The BPA's finding that the "City has consistently and fairly applied the ordinances in question towards the San Remo exactly as it has applied the ordinances towards all other similarly situated hotels" is not supported by any evidence in the record.

(5) The BPA's finding that petitioners "failed to prove that they held, prior to the enactment of the relevant ordinances, a preexisting non-conforming use" is not

supported by any evidence in the record and further fails to address petitioners' claim of a permitted conditional use under Planning Code § 179.

(6) The BPA's finding that "In any event, if they held such a lawful non-conforming use, . . . they abandoned it" is not supported by any substantial evidence contained in the administrative record and fails to address petitioners' claim that the purported abandonment was unlawfully compelled by the enactment of the Residential Hotel Unit Conversion and Demolition Ordinance, San Francisco Administrative Code § 41 et seq. ("HCO").

c. The BPA further abused its discretion by ratifying the Zoning Administrator's use of legally defective interim zoning ordinances in the determination in disregard for petitioners' right to due process of law.

10. The BPA is a local agency. The right to continue an established business is sufficiently personal and important to preclude its elimination by a nonjudicial local agency. A fundamental vested right is at stake because petitioners presented unrebutted testimony that the BPA's decision will cause the closure of the San Remo which has been in continuous operation for more than 80 years. Petitioners have a fundamental vested right to continue the operation of their business as a commercial establishment. Accordingly, the Court's review of the BPA's decision should be under the independent judgment test.

11. Petitioners have exhausted the available administrative remedies required to be pursued by them.

12. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of law.

13. If the BPA's decision is allowed to be enforced, petitioners will be irreparably injured in that petitioners' undisputed and continuous summer commercial use of their property will be subject to allegations of illegality, and enforcement actions by the Planning Department and housing advocates. Petitioners' business is financially dependent on the commercial use of the San Remo, particularly during the summer tourist season when the San Remo has always been entitled to unrestricted commercial use. Without the benefit of that commercial use, the San Remo cannot provide petitioners a fair reasonable return on their investment and petitioners will be forced to close the business. Furthermore, the imposition of a stay is not against the public interest because it would merely maintain the status quo and permit petitioners to continue the lawful operation of their business until this action is resolved.

14. As a result of the BPA's action, petitioners have sustained damages as follows: The BPA's decision has inversely condemned the San Remo and interfered with petitioners' reasonable investment backed expectations. The decision also violates petitioners' state constitutional rights by the unfair and discriminatory application of the City's ordinances. The BPA is liable for these damages by reason of its blatant disregard for the rights of petitioners as alleged above, and because the City's ordinances are unconstitutional as applied to petitioners. Petitioners are entitled to recover these damages under Code of Civil Procedure § 1095.

15. Petitioners are obligated to pay attorneys' fees and costs incurred to prosecute this action. Petitioners are entitled to recover their attorneys' fees pursuant to Government Code § 800, because the BPA's actions are arbitrary and capricious and because the BPA acted in blatant disregard for petitioners' constitutional rights.

16. On March 10, 1993, petitioners requested that the BPA prepare a true and correct copy of the administrative record. A true and correct copy of the record will be lodged with the Court before the hearing on this petition.

17. On May 4, 1993, petitioners filed suit in United States District Court alleging that respondents' conduct violated petitioners' federal civil rights. On September 15, 1993, the District Court found that it was "likely that plaintiffs can demonstrate that the City acted arbitrarily and capriciously in refusing to recognize the San Remo's prior non-conforming use" and issued a preliminary injunction against the City.

SECOND CAUSE OF ACTION

(DAMAGES FOR INVERSE CONDEMNATION ARISING OUT OF BPA DECISION CLASSIFYING THE SAN REMO HOTEL AS 62 GROUP HOUSING UNITS)

18. Plaintiffs reallege paragraphs 1 through 17.

19. Prior to the effective date of any zoning ordinances prohibiting commercial use of the San Remo, plaintiffs had continuously used the San Remo as a commercial, tourist hotel. At all times such commercial use has been pursuant to and authorized by local law. Therefore, plaintiffs possess a vested right to continue operating the San Remo as a lawful, non-conforming tourist hotel.

20. The Zoning Administrator's classification of the San Remo Hotel as a 62 units of "group housing" under the Planning Code, as upheld by the BPA on appeal, violates plaintiffs' state constitutional rights in that said decisions fail to substantially advance legitimate government interests as

required by Article I, Section 19, of the California Constitution. Not only is there an abundance of vacant residential hotel units available in San Francisco, no residents protected by the HCO will be displaced by such continued commercial use. Consequently, unconditional, continued commercial use of the San Remo by plaintiffs would not result in the problems purportedly remedied by the Planning Code, i.e., a shortage of available housing for low income, elderly, and disabled persons.

21. The Zoning Administrator's classification of the San Remo Hotel as a 62 units of "group housing" under the Planning Code, as upheld by the BPA on appeal, forces plaintiffs to bear the full cost of providing a general public benefit: housing for low income, elderly and disabled San Francisco residents. This violates the state constitution, which bars Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

22. The Zoning Administrator's classification of the San Remo Hotel as a 62 units of "group housing" under the Planning Code, as upheld by the BPA on appeal, in conjunction with defendants' administrative determinations, which allow cash payments to be made in lieu of compliance with the terms of the ordinances, establish that defendants are simply attempting to extort valuable resources from plaintiffs and other similarly situated property owners. The HCO's requirement of replacement housing fees has been characterized as "ransom" by the California Court of Appeal. (Bullock v. San Francisco (1990) 221 Cal.App.3d 1072, 1101) In striking down a substantially similar regulation, the New York Court of Appeals recognized that a provision of this kind "amounts to just the sort of exaction which could be classified, not as a 'valid regulation of land use but "an out-

and-out plan of extortion." ' " (Seawall Associates v. New York City (1989) 542 N.E.2d 1059, 1070)

23. The City's ordinances have been applied in an attempt to extort a $567,000 ransom from plaintiffs without an individualized determination that continued use of the San Remo as a commercial hotel would result in the loss of housing for low-income, elderly, or disabled persons.

24. The Zoning Administrator's classification of the San Remo Hotel as a 62 units of "group housing" under the Planning Code, as upheld by the BPA on appeal, also precludes all economically viable use of plaintiffs' property.

25. Defendants' actions have resulted in the taking of plaintiffs' property.

26. As a result of that taking, plaintiffs have suffered damages from a reduction in the value of their property and a reduction in the amount of income generated by the property. Plaintiffs' damages exceed $567,000.

27. Plaintiffs have received no compensation for the taking of their property.

28. Plaintiffs have incurred and/or will incur attorneys' fees, appraisal fees, engineering fees and other fees and costs because of this proceeding, which are recoverable pursuant to Code of Civil Procedure § 1036.

THIRD CAUSE OF ACTION

(DAMAGES FOR INVERSE CONDEMNATION ARISING OUT OF CONDITION ON CONDITIONAL USE PERMIT)

29. Plaintiffs reallege paragraphs 1 to 28.

30. On December 11, 1996, plaintiffs paid the $567,000 fee that the City contends is due under the HCO and as a condition of plaintiffs' conditional use permit. That payment was made under protest and was tendered with a letter stating the factual and legal basis for that protest. The fee should be refunded to plaintiffs because:

A. The requirement of a replacement housing fee in this case effects a taking without just compensation under Article 1, Section 19 of the California Constitution.

B. The amount of the fee imposed is not roughly proportional to the impact of the historically permitted, continued use of the San Remo as a tourist/commercial hotel.

C. A conditional use authorization is not required to operate the San Remo in its historically permitted manner as a tourist hotel. The City's requirement that San Remo seek and justify a conditional use authorization is a concerted effort to avoid the preemptive effects of the Ellis Act. (Government Code § 7060 et. seq.) The City is seeking to use the Planning Code and the conditions imposed on the conditional use authorization to prevent San Remo from exercising the rights protected by the Ellis Act. The City is imposing a prohibitive price on the exercise of San Remo's rights under the Ellis Act by precluding any further use of the hotel unless San Remo pays the HCO replacement housing fee. But for the

prohibitive price imposed by the City, San Remo would have exercised their rights under the Ellis Act.

D. The fee fails to substantially advance a legitimate government interest.

E. The requirement of the fee denies San Remo economically viable use of the hotel.

F. The requirement of the fee substantially interferes with the San Remo's rights under Civil Code §§ 1954.25 et. seq. At least 53 of the rooms at the San Remo are commercial property as defined in Civil Code § 1954.26 because: (1) They are not dwelling units as hotel tax is due for their rentals; (2) The San Remo is not a residential hotel because more than 6 rooms are used for transient/daily use and fewer than 20% of the rooms are occupied as a primary residence; (3) Fewer than 20 rooms and fewer than 20% of the rooms were occupied as a primary residence on August 5, 1987; and (4) The San Remo is not a mobile home park.

31. The San Remo Hotel is subject to two overlapping regulatory schemes enacted by the City: Chapter 41 of the San Francisco Administrative Code, the Residential Hotel Unit Conversion and Demolition Ordinance (the "Hotel Ordinance") and San Francisco Planning Code § 722 et. seq., the North Beach Neighborhood Commercial Zoning Ordinance.

32. When plaintiffs purchased the San Remo Hotel in 1970, it was zoned C-2 Commercial and there were no restrictions on its use as a tourist hotel. In 1970, the City's Planning Code made no distinction between residential or tourist use of hotel properties -- both were allowed in a C-2 Commercial zone.

33. When plaintiffs purchased the San Remo Hotel it was in a state of extreme disrepair. In 1973, the City recorded a condemnation notice against the property and required plaintiffs to make substantial repairs to bring the building in compliance with the codes governing commercial hotels. Plaintiffs spent more than $250,000 on the repairs and in 1976 the City issued a Certificate of Final Completion and Occupancy for a 62 room hotel. In 1977, the City issued a Permit of Occupancy authorizing the operation of a hotel with 62 guest rooms.

34. From 1916 to the present, the guest rooms in the San Remo Hotel have been rented primarily to transient and tourist guests on a commercial basis. From at least 1970 through the present, City has collected transient hotel taxes from the commercial use of the San Remo's hotel rooms. In 1987, the City conducted an audit to collect additional tourist hotel taxes allegedly owed by the San Remo Hotel. Each year, from 1970 through the current year, the City issued a hotel license, which does not distinguish between tourist/commercial and residential use, for the San Remo Hotel.

1981 HOTEL ORDINANCE

35. In 1981, without any notice to plaintiffs, the City enacted the first Hotel Ordinance (the "1981 Hotel Ordinance"). Before it was enacted, the City Attorney advised the Board of Supervisors that the ordinance was unconstitutional.

36. The stated purpose of the 1981 Hotel Ordinance was to preserve hotel units for residential use by low income, disabled and homeless persons, by restricting the ability of

hotel owners to convert (i.e., change the use from residential to tourist), alter, replace, or demolish their hotels.

37. The 1981 Hotel Ordinance established seasonal restrictions on the rental of regulated hotel rooms which prohibited the owner from renting vacant hotel units designated as residential to tourists during the winter months only. Most significantly, the 1981 Hotel Ordinance permitted the unrestricted tourist/commercial use of residentially designated units during the summer (May through September).

38. The 1981 Hotel Ordinance restricted the use of residentially designated units during the winter months unless a hotel owner applied for a permit to convert under that law. A permit to convert could only be issued if a hotel owner paid the City ransom in the form of providing replacement housing, or paying an in-lieu fee equal to 40% of the cost of construction and 100% of the cost of site acquisition. The 1981 Hotel Ordinance also imposed civil and criminal penalties for violations.

RE-ZONING

39. Plaintiffs are informed and believe and therefore allege that: Notwithstanding the City's knowledge that the 1981 Hotel Ordinance was unconstitutional, the City decided to enact the ordinance. However, the City decided to further its goal of imposing unconstitutional restrictions on the use of hotels by changing the zoning regulations throughout the City so that it could continue to impose the unconstitutional restrictions even if a Court determined that the Hotel Ordinance was unconstitutional. This was accomplished through a series of interim rezonings, which were finalized after the California Legislature enacted the Ellis Act

(Government Code § 7060 et seq.). In particular, the City enacted 4 different interim zoning ordinances in a period of 5 years that the City contends limit plaintiff's use of the San Remo Hotel, all without notice to plaintiffs.

40. In 1982, the City enacted an interim RC-3 District which purported to require conditional use authorization for conversion to tourist hotel use. A 1984 interim re-zoning ordinance entitled Interim North Beach Neighborhood Commercial Housing Conservation District conceded that the 1982 interim re-zoning was legally defective and purported to require conditional use authorization for conversion of any dwelling units or other housing. The notice sent to affected property owners of this zoning change only described possible restrictions to the conversion of dwelling units, a use the City admits does not include residentially designated hotel rooms. In 1985, without notice, the City adopted the North Beach Neighborhood Commercial Study District which purported to require conditional use authorization for conversion to tourist use. Throughout these years of repeated interim rezonings, plaintiffs continued to operate their hotel as primarily a tourist use as permitted by the 1981 Hotel Ordinance. In reliance on their commercial use rights, plaintiffs also expended an additional $200,000 in improvements to the property. The City continued to issue plaintiffs a hotel license each year and to collect hotel taxes from plaintiffs for their commercial/tourist rentals.

41. In 1987, the City enacted the North Beach Neighborhood Commercial Zoning Ordinance (the "Zoning Ordinance"), which created the North Beach Neighborhood Commercial District. The City's stated purpose was "to ensure the livability and attractiveness of North Beach." The Zoning Ordinance requires a conditional use authorization for new tourist hotels. The Zoning Ordinance protects existing

businesses by recognizing those uses and features which lawfully existed on the effective date of the passage of the Zoning Ordinance as lawful nonconforming or conditional uses.

1990 HOTEL ORDINANCE

42. On May 12, 1990, the City enacted a revised version of the Hotel Ordinance (the "1990 Hotel Ordinance"), which unconstitutionally restricts the rights of ownership and use of plaintiff's private property in the following ways:

(a) The 1990 Hotel Ordinance arbitrarily and without justification prohibits plaintiffs from using the San Remo Hotel as a tourist hotel without payment to the City or a non-profit housing developer of an exorbitant and oppressive in-lieu fee of $567,000.

(b) The 1990 Hotel Ordinance requires any hotel owner who seeks to rent rooms to tourists during the summer to rent the rooms at least 50% of the time to permanent residents during the winter months, thereby subjecting the rooms to the eviction controls of the San Francisco Rent Control Ordinance and often eliminating the possibility of using these rooms as historically permitted tourist rentals during the summer season.

(c) The 1990 Hotel Ordinance fails to provide any administrative hearing procedure for relief on grounds of economic hardship, and fails to consider whether regulated hotel owners may obtain a fair return on investment in establishing conditions for conversion to other uses.

(d) The 1990 Hotel Ordinance arbitrarily mandates oppressive criminal and civil penalties for violation of its provisions.

(e) The 1990 Hotel Ordinance grants legal standing in the form of a private cause of action to nonprofit housing advocates, such as the Tenderloin Housing Clinic, permitting them to sue hotel owners for it's violations. No actual injury need be alleged. As plaintiffs in these lawsuits, non-profit housing advocates have coerced large cash payments from hotel owners in the form of attorney's fees. Additionally, non profit housing advocates have also used the ordinance to challenge plaintiffs request for seasonal administrative relief and, after being unsuccessful at the administrative level, have demanded and received cash payments from plaintiffs in order to forego the housing advocates' rights of appeal under the ordinance.

ADMINISTRATIVE PROCEEDINGS

43. The 1981 Hotel Ordinance required the operator of each hotel in San Francisco to make a declaration specifying the number of rooms occupied by individuals who had resided in their hotel rooms for 32 days or more as of September 23, 1979. Based on that declaration, the City issued an initial unit usage report to the hotel operator certifying the number of residential and tourist units that were permitted in the building. This designation occurred without regard to nor mention of the zoning regulations applicable to the property.

44. In 1981, the San Remo Hotel was operated by Jean Iribarren, who leased it from the plaintiffs. Mr. Iribarren submitted a false declaration, which stated that all of the rooms in the San Remo Hotel were occupied by persons who had resided in their rooms for more than 32 days. Based on

that false declaration, the City classified all 62 of the rooms in the San Remo Hotel as residential under the Hotel Ordinance.

45. Plaintiffs did not receive any notice that a declaration was required nor any notice that Mr. Iribarren had submitted his false declaration. The 1981 Hotel Ordinance only allows appeals for 10 days after the initial unit usage report was issued, which plaintiffs could not have filed because they had no notice of the false declaration nor the City's initial usage report.

46. In May 1990, plaintiffs filed an application with the City to convert the San Remo Hotel's residentially designated hotel rooms to tourist use under the 1990 Hotel Ordinance. Until 1997, the City refused to act on the application.

47. After plaintiffs filed the conversion application under the 1990 Hotel Ordinance, the Planning Department informed plaintiffs that the Zoning Ordinance defines the rooms at the San Remo Hotel as group housing units and therefore plaintiffs must obtain a conditional use permit under the Planning Code to convert its 62 group housing units into a tourist hotel. The City contends that the false declaration submitted by Mr. Iribarren under the 1981 Hotel Ordinance, without notice to plaintiffs, resulted in an abandonment of plaintiffs' commercial zoning rights.

48. Although the Planning Code does not distinguish between residential and tourist/commercial hotels and the Planning Code does not define group housing to include residential hotels, the City contends that by "administrative practice" residential hotels rooms are treated as group housing. The City arbitrarily and without any legal basis

insists that the tourist use actually maintained by plaintiffs, which was legal under the Hotel Ordinance, is not a prior non-conforming use because it has been by "special permission" of the Zoning Administrator. This determination was made despite a 1981 published San Francisco City Attorney Opinion that the HCO is "not a land use regulation" and that the HCO "does not render an existing structure or use a non-conforming structure or use."

49. In July 1990, plaintiffs filed applications for a conditional use permit and environmental review under protest. After a 1 year delay, the City finally issued a Final Negative Declaration stating that the continued tourist operation of plaintiffs' hotel would not have a significant effect on the environment. Thereafter, the City repeatedly and steadfastly refused to schedule a hearing on plaintiffs' application for conditional use authorization. In June of 1992, plaintiffs invoked the protection of the California Permit Streamlining Act (California Government Code §§ 65920 et. seq.) which requires government agencies to act on applications for development permits within specified time frames. Throughout the City's delay in acting on the permit applications, plaintiffs continued to insist that no conditional use permit could be lawfully required in this case.

50. Finally, on August 20, 1992, the City scheduled a public hearing on plaintiffs' application for a conditional use permit. On the day of the public hearing, the City Attorney advised plaintiffs that the Planning Commission was without jurisdiction to adjudicate plaintiffs' claim that the San Remo Hotel was a lawful non-conforming or permitted conditional use as defined by the Zoning Ordinance. The City Attorney further advised plaintiffs that only the Board of Permit Appeals could make such a finding. Plaintiffs agreed to a delay of the Planning Commission hearing so that the Board

of Permit Appeals could hear their claims. The City's conduct throughout the administrative process described herein was intentionally calculated to prevent plaintiffs from seeking judicial relief.

51. On December 9, 1992, the San Francisco Board of Permit Appeals issued an oral decision upholding the determination of the Zoning Administrator that the San Remo Hotel is 62 units of group housing that require conditional use authorization to be rented to tourists even though the Hotel Ordinance allows some tourist rentals. The President of the Board of Permit Appeals stated that it could not rule on the constitutionality of the laws involved in the case, but his view was that the City has forced small hotel owners to assume the social burden of supplying affordable housing, which should be borne by every taxpayer.

52. On January 21, 1993, the Planning Commission approved plaintiffs' application for conditional use authorization on condition that plaintiffs mitigate the "loss of housing" by complying with the replacement housing provisions of the 1990 Hotel Ordinance. The 1990 Hotel Ordinance requires a ransom payment of $567,000 by plaintiffs to the City or non-profit housing corporations. In addition to the payment to replace the "lost housing", the Planning Commission's decision also violates plaintiffs' fundamental rights by requiring plaintiffs to provide lifetime leases to the current residents of the San Remo Hotel. The Planning Commission decision also requires plaintiffs to obtain variances from the floor area ratio limitations and parking requirements created by the Zoning Ordinance.

53. The Planning Code provides for an appeal of a conditional use decision of the Planning Commission to the Board of Supervisors. To make that appeal, plaintiffs were

required to obtain the signatures of thirty-five (35) of the neighboring property owners (owners of at least 20% of the land area within a radius of 300 feet from the exterior limits of the subject property).

54. On April 19, 1993, the Board of Supervisors by a vote of 6-5 rejected plaintiffs' administrative appeal and upheld the decision of the Planning Commission which imposed severe, arbitrary, and unreasonable conditions on plaintiffs' ability to regain their commercial zoning classification. One Supervisor called the decision "organized extortion".

55. Because the San Remo Hotel is a lawful commercial use under zoning, the City may not lawfully impose a requirement that plaintiffs seek and justify parking and floor area ratio variances. However, on May 19, 1993, plaintiffs voluntarily filed applications for the variances under protest.

56. Under Planning Code § 306.2, the City Zoning Administrator was required to hold a public hearing within thirty days after accepting the application on May 18, 1993. The City Zoning Administrator failed to comply with this requirement and instead, intentionally delayed until August 24, 1993 when he held a duly noticed public hearing on the variance applications. Despite repeated requests by plaintiffs, the Zoning Administrator refused to act on the variance applications.

57. City Planning Code § 306.4(d)(1) further provides that if the Zoning Administrator fails to act on a variance application within 60 days from the date of conclusion of the hearing, the applicant shall be entitled "to cause the matter to be placed before the City Planning Commission for decision

at its next following regular meeting." On October 25, 1993, 60 days following the duly noticed public hearing on the variance applications, plaintiffs requested in writing that the matter be immediately set for decision before the City Planning Commission as required by law. The City refused plaintiffs' request and instead the Planning Commission met in closed door executive session to discuss the San Remo matter. Under California Government Code § 65920 et. seq., the variance applications must be deemed approved by operation of law, due to the City's failure to hold a timely hearing and issue a timely decision.

58. On March 5, 1997, after several demands from plaintiffs, the Zoning Administrator approved the variance applications. On March 17, 1997, the time for an administrative appeal of the variance approvals expired, and the variance became finally approved.

59. On or about March 6, 1997, the Zoning Administrator confirmed that plaintiffs had satisfied all of the conditions of their conditional use permit. Therefore, on or about March 6, 1997, the City imposed the replacement housing fee of $567,000 and issued the HCO permit to convert.??

60. Despite the arbitrary regulations imposed on plaintiffs by the regulatory schemes imposed by the City, plaintiffs have maintained a continuous, actual and lawful commercial use of the San Remo Hotel.

61. The City's application of the 1990 Hotel Ordinance in conjunction with the Zoning Ordinance, to plaintiffs' property, forces plaintiffs to bear a disproportionate part of the public burden of providing housing to low income and homeless persons, all without due process of law. Not only

must plaintiffs pay extortionate replacement housing fee exactions, they also must provide lifetime housing to existing residents.

62. The City's application of the 1990 Hotel Ordinance, together with the Zoning Ordinance deprives plaintiffs of economically viable use of their property. The regulatory provisions of the 1990 Hotel Ordinance and the Zoning Ordinance operate to inflict extreme financial losses on plaintiffs. Plaintiffs are thus arbitrarily and capriciously being denied a reasonable rate of return on their investment in the San Remo Hotel without due process of law. As a direct result of the City's conduct, plaintiffs are also being deprived of their reasonable investment backed expectation, and of a reasonable rate of return on their investment all without due process of law.

63. The arbitrary and capricious condition of approval on plaintiffs' conditional use permit requiring pay the City $567,000 as a condition on the continued operation of plaintiffs' business substantially impairs the value of the San Remo Hotel and has had a confiscatory effect on the market value of the property. Under the regulations of the Hotel Ordinance, plaintiffs have always enjoyed an unrestricted commercial/tourist use of their hotel. The effect of City's conditional use decision is that any commercial/tourist use at the San Remo Hotel was in jeopardy because plaintiffs had refused to pay what one supervisor called extortionate ransom to the City.

64. In order for plaintiffs to regain the historically permitted commercial use of their property they were required to pay the City an "in-lieu fee" of $567,000.

65. On May 4, 1993, plaintiffs filed an action against defendants in the United States District Court for the Northern District of California. (San Remo Hotel v. San Francisco, No. 93-1644-DLJ) That action is still pending; therefore, any statutes of limitations applicable to plaintiff's claims were also tolled from May 4, 1993 until this action and complaint were filed.

66. Defendants' unlawful condition of approval requiring plaintiffs' to pay $567,000 as a condition of approval on the conditional use permit fails to substantially advance legitimate government interests, deprives plaintiffs of the opportunity to earn a fair return on their investment, denies plaintiffs economically viable use of their property, and/or force plaintiffs to bear the public burden of housing the poor, all without just compensation. Accordingly, defendants' unlawful condition of approval requiring plaintiffs' to pay $567,000 as applied to plaintiffs amounts to an inverse condemnation of their property.

FOURTH CAUSE OF ACTION

(DAMAGES FOR INVERSE CONDEMNATION ARISING OUT OF HOTEL ORDINANCE)

67. Plaintiffs reallege paragraphs 1 to 66.

68. The HCO, and specifically the requirement that plaintiffs' pay the City $567,000 to obtain an HCO permit to convert, fails to substantially advance legitimate government interests, deprives plaintiffs of the opportunity to earn a fair return on their investment, denies plaintiffs economically viable use of their property, and forces plaintiffs to bear the public burden of housing the poor, all without just compensation.

69. Defendants' refusal to permit the "conversion of the San Remo Hotel absent payment of the $567,000 ransom under the HCO fails to substantially advance legitimate government interests, deprives plaintiffs of the opportunity to earn a fair return on their investment, denies plaintiffs economically viable use of their property, and/or force plaintiffs to bear the public burden of housing the poor, all without just compensation. Accordingly, defendants' requirement that plaintiffs pay $567,000 in exchange for the issuance of a permit to convert, as applied to plaintiffs, amounts to an inverse condemnation of their property.

70. Thus, plaintiffs are entitled to a refund of the $567,000 that was tendered to defendants on December 11, 1996.

FIFTH CAUSE OF ACTION

(DAMAGES FOR INVERSE CONDEMNATION ARISING OUT OF REGULATORY SCHEME AS A WHOLE)

71. Plaintiffs reallege paragraphs 1 to 70.

72. The City's ordinances and its administrative actions regarding the San Remo violate plaintiffs' state constitutional rights in that they fail to substantially advance legitimate government interests as required by Article I, Section 19, of the California Constitution.

73. The City's application of its legislative scheme to the San Remo does not substantially advance a legitimate government interest because there is not a close nexus between the City's demand for $567,000 and any public harm that might result from the continued use of the San Remo in

its historically permitted commercial manner. Not only is there an abundance of vacant residential hotel units available in San Francisco, no residents protected by the HCO will be displaced by such continued commercial use. Consequently, unconditional, continued commercial use of the San Remo by plaintiffs would not result in the problems purportedly remedied by the HCO, i.e., a shortage of available housing for low income, elderly, and disabled persons.

74. The application of the City's ordinances to plaintiffs forces them, and a small group of other property owners, to bear the full cost of providing a general public benefit: housing for low income, elderly and disabled San Francisco residents. This violates the state constitution, which bars Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

75. The provisions of the City's ordinances, in conjunction with defendants' administrative determinations, which allow cash payments to be made in lieu of compliance with the terms of the ordinances, establish that defendants are simply attempting to extort valuable resources from plaintiffs and other similarly situated property owners. The HCO's requirement of replacement housing fees has been characterized as "ransom" by the California Court of Appeal. (Bullock v. San Francisco (1990) 221 Cal. App.3d 1072, 1101) In striking down a substantially similar regulation, the New York Court of Appeals recognized that a provision of this kind "amounts to just the sort of exaction which could be classified, not as a 'valid regulation of land use but "an out-and-out plan of extortion.'" (Seawall Associates v. New York City (1989) 542 N.E.2d 1059, 1070)

76. The City's ordinances have been applied in an attempt to extort a $567,000 ransom from plaintiffs without an individualized determination that continued use of the San Remo as a commercial hotel would result in the loss of housing for low-income, elderly, or disabled persons.

77. The City's ordinances and defendants' administrative actions also preclude all economically viable use of plaintiffs' property.

78. Defendants' actions have resulted in the taking of plaintiffs' property.

79. As a result of that taking, plaintiffs have suffered damages from a reduction in the value of their property and a reduction in the amount of income generated by the property. Plaintiffs' damages exceed $567,000.

80. Plaintiffs have received no compensation for the taking of their property.

81. Plaintiffs have incurred and/or will incur attorneys' fees, appraisal fees, engineering fees and other fees and costs because of this proceeding, which are recoverable pursuant to Code of Civil Procedure § 1036.

WHEREFORE, petitioners and plaintiffs the San Remo Hotel L.P., Thomas Field, Robert Field, and T & R Investment Corp. pray for relief as follows:

1. For a peremptory writ of mandate, pursuant to Code of Civil Procedure § 1094.5, directed to respondents, compelling them, their employees, agents, officers and all persons acting on their behalf or in concert with them to recognize and acknowledge that the San Remo is a permitted

conditional hotel use pursuant to the San Francisco Planning Code, California law and the United States Constitution;

2. Petitioners recover their damages according to proof pursuant to Code of Civil Procedure § 1095;

3. Plaintiffs request an award of damages in the sum of $567,000 plus interest at the legal rate from December 11, 1996;

4. Plaintiffs request an award of costs and attorneys' fees as permitted by law; and

5. For such other relief as the Court deems just and proper.

Dated: March ___, 1997.

ANDREW M. ZACKS
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PAUL F. UTRECHT
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235 Montgomery Street, Suite 810
San Francisco, CA 94104

By_____
Paul F. Utrecht

Attorneys for Petitioners and Plaintiffs San Remo Hotel L.P., Thomas Field, Robert Field, and T & R Investment Corp.

VERIFICATION

I, the undersigned, say:

I am a petitioner in this proceeding. The facts alleged in ¶¶ 1-17 of the above second amended and supplemental petition and complaint are true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 25, 1997.

_____

Petitioner Thomas Field

RESERVED FEDERAL CLAIMS

SIXTH CAUSE OF ACTION

DECLARATION THAT THE REGULATORY SCHEME IN CONJUNCTION WITH THE CITY'S ADMINISTRATIVE DETERMINATIONS REGARDING PLAINTIFF'S PROPERTY CONSTITUTE AN AS APPLIED TAKING IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS

82. Plaintiffs reallege paragraphs 1 to 81. This cause of action is alleged in the alternative to the fifth cause of action.

83. The Regulatory Scheme and the City's administrative actions as applied to plaintiff violate the Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

SEVENTH CAUSE OF ACTION

DECLARATION THAT THE REGULATORY SCHEME IN CONJUNCTION WITH THE CITY'S ADMINISTRATIVE DETERMINATIONS REGARDING PLAINTIFFS' PROPERTY VIOLATE PLAINTIFFS' EQUAL PROTECTION, SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS

84. Plaintiffs reallege paragraphs 1 to 84.

85. Despite the City's arbitrary application of the Regulatory Scheme, plaintiffs have maintained a continuous, actual and lawful tourist use of the San Remo Hotel.

86. The City's application of the Regulatory Scheme deprives plaintiffs of economically viable use of their property. The Regulatory Scheme operates to inflict extreme financial losses on plaintiffs. Plaintiffs are thus arbitrarily and capriciously being denied a reasonable rate of return on their investment in the San Remo Hotel without due process of law. As a direct result of the City's conduct, plaintiffs are also being deprived of their reasonable investment backed expectation, and of a reasonable rate of return on their investment all without due process of law.

87. The City has established a custom, policy, pattern and practice of enforcing the Regulatory Scheme against the San Remo Hotel and other hotels, and in particular the ransom provision of the Hotel Ordinance against plaintiffs, under color of law, and has deprived plaintiffs of the use of their property and of a fair rate of return on their investment in violation of their equal protection, substantive and procedural due process rights. Thus, the City has arbitrarily interfered with plaintiffs' private property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

EIGHTH CAUSE OF ACTION

DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. § 1983

88. Plaintiffs reallege paragraphs 1 to 88.

89. By reason of the City's application of the unconstitutional Regulatory Scheme, plaintiffs have suffered, and will suffer irreparable harm and hereby request injunctive relief pursuant to 42 U.S.C. § 1983 to restrain the City from violating plaintiffs' constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

90. Plaintiffs have suffered damages as result of the City's unconstitutional actions, including the lost revenues from the restrictions on their use of the property, the reduced value of their property caused by the unconstitutional restrictions and the costs of pursuing multiple administrative proceedings required by the City.

Dated: March ___, 1997.

ANDREW M. ZACKS
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PAUL F. UTRECHT
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235 Montgomery Street, Suite 810
San Francisco, CA 94104

By_____
Paul F. Utrecht

Attorneys for Petitioners and Plaintiffs San Remo Hotel L.P., Thomas Field, Robert Field, and T & R Investment Corp.

PROOF OF SERVICE

I, Christina Lauridsen, declare as follows:

I am over eighteen years of age and not a party to the within action; I am employed at the Law Offices of Paul F. Utrecht, and at his direction I served the within pleadings; that my business address is 235 Montgomery Street, Suite 810, San Francisco, California 94104.

On March 25, 1997, I served:

SECOND AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS AND COMPLAINT FOR DAMAGES

by placing true copies thereof in an envelope addressed to:

Andrew W. Schwartz
Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102

that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid; and that the envelope was deposited with the United States Postal Service at San Francisco, California, for mailing on that same date.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 25, 1997.

_____
Christina Lauridsen

SUPREME COURT OF THE UNITED STATES

No. 04-340

[Decided December 10, 2004]

San Remo Hotel, L.P., et al.
Petitioners

v.

City and County of San Francisco, et al.
Respondents

Judges: Rehnquist, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsberg, Breyer.

OPINION

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted limited to Question 1 presented by the petition.